LIFE AND TIMES

OF

JAMES MADISON.

HISTORY

OF THE

LIFE AND TIMES

OF

JAMES MADISON.

By WILLIAM C. RIVES.

VOLUME II.

BOSTON:
LITTLE, BROWN, AND COMPANY.
M DCCC LXX.

E 342
.R622

Entered according to Act of Congress, in the year 1866, by

WILLIAM CABELL RIVES,

In the Clerk's Office of the United-States Court for the Eastern District of Virginia.

400199
3n

CAMBRIDGE:

STEREOTYPED AND PRINTED BY

JOHN WILSON AND SON.

PREFACE.

The second volume of the "History of the Life of Madison," prepared for the press more than four years ago, in the state in which it is here given, but prevented from publication by the inauspicious circumstances of the times, is now submitted to the judgment of the reader. It comprehends the most instructive, and, in a civil and political view, the most eventful period of American annals, — from the close of the war of the Revolution, down to and including the formation and establishment of the Constitution of the United States. It was during this period that the embarrassments and disorders incident to the imperfect system of confederation by which the States were held together — kept in check, while the war was in progress, by the spirit of union and strenuous patriotism awakened by the crisis — at length broke out in all their nakedness and force. The distressing experience of the radical vices of the confed-

eration, thus "brought home to the business and bosoms of men" during the four or five years immediately succeeding the termination of the war, conducted the nation gradually, but certainly and logically, to the remedies provided in the Constitution of 1788.

The history of this period, Mr. Madison was accustomed to say, is like the preamble of a statute, — the *key* to a true conception and just interpretation of the Constitution, unlocking and revealing the practical evils it was framed to remedy, and which must ever be kept in mind in seeking its legitimate sense and operation. No portion of our annals, therefore, merits a fuller development, or presents a stronger claim to the attention of those, of whatever country, who may be interested in acquiring a correct knowledge of the political institutions of America, and especially of such of her own citizens as feel a patriotic solicitude for the preservation of these institutions in their original spirit and purity.

From the leading agency of Mr. Madison in the initiation, conduct, and consummation of this great organic change, the history of his public life becomes necessarily a history of the Constitution of the United States, and under a form, which, combining a concrete narrative of individual exertions and individual opinions with the more abstract

process of national deliberations, may impart to the latter a livelier and more attractive interest.

The Constitution of the United States is thus also exhibited, not merely in the collective and final result of its provisions, but in the successive stages of its elaboration and development from the first elementary conception to the last finishing touch; showing, at each step, the influence which the principles and opinions of the prominent actors, and the interests and policy of the different States, had in moulding and deciding its ultimate shape. In this view, the chapters devoted to a general outline of the proceedings and debates of the Convention, in their chronological sequence, will, it is presumed, not appear misplaced or unimportant in the work we have undertaken. The correspondence and papers of Mr. Madison throwing new and important lights on every act and scene of the great national drama in which his own *rôle* was so conspicuous and influential, no explanation is deemed necessary for the liberal use which has been made of them, whether for the illustration of his conduct and opinions, or the elucidation of contemporary events.

September, 1865.

CONTENTS.

CHAPTER XXI.

Legislative Vacation — Mr. Madison resumes his Literary, Legal, and Scientific Studies — Made Doctor of Laws by College of William and Mary, in Virginia — Disordered Situation of the Confederacy — Commercial Embarrassments and Distress resulting from Selfish Policy of British Government — Proposition to invest Congress with Power to regulate Commerce with Foreign Nations — Able Letter of Mr. Madison on the Subject — First Acquaintance and Correspondence with Mr. Monroe, then a Delegate from Virginia to Congress — Character of Mr. Monroe — Secret History of Congress — Parties growing out of Foreign Appointments — Mr. Adams appointed Minister to England — Mr. Jefferson, to France — Mr. Jay, Secretary for Foreign Affairs — Congress removes from Trenton to New York — Divided Opinions of the Leading Men of Virginia on the Proposed Grant to Congress of the Power over Commerce — Richard Henry Lee and Colonel Grayson — Washington and Jefferson — George Mason and Patrick Henry 1–35

CHAPTER XXII.

Mr. Madison declines going Abroad — Excursion made by him during Recess of the Legislature — Visits to Congress and to General Washington — Re-assembling of the Legislature — Characters of its Leading Members — Mr. Madison again appointed Chairman of Committee for Courts of Justice — Petitions from Seaport Towns bring up Question of Commercial Regulation — Resolution for vesting the Power in Congress opposed by the older Members — Mr. Madison's Speech in Support of it — Carried in first instance, but subsequent Limitation of its Duration causes its

Friends to abandon it — Mr. Madison proposes a Plan of a Politico-Commercial Convention of the States, to consider the Expediency of enlarging the Powers of Congress for protecting the Trade of the Confederacy — Reception of his Plan favored by Contemporaneous Proceedings of Joint Commissioners of Maryland and Virginia, appointed to settle Jurisdiction over Adjacent Waters — History of those Proceedings — Able Letter of Mr. Madison to General Washington, in Explanation of his Views — His Plan of a Convention adopted — Its Importance as the Initial Measure in the Series of those which led to the Formation and Establishment of the Constitution of the United States — Claims of Priority for other Movements considered — Mr. Madison's Steady Adherence to the Plan of Operations now commenced 36–69

CHAPTER XXIII.

Mr. Madison makes another Effort for Compliance with Treaty of Peace respecting British Debts — His Proposition, relative to Erection of District of Kentucky into an Independent State, adopted — His Labors in prosecuting Revision of the Laws — Unhappy Financial Measures of the Legislature — It adjourns — Occupations and Studies of Mr. Madison during Recess — Taste for Natural History promoted in Virginia by Officers of the French Army, while its Head-Quarters were at Williamsburg, after Surrender of Yorktown — Researches of Mr. Madison in that Department of Science — Correspondence with Mr. Jefferson, in which he examines and animadverts on Theories of Buffon — General Philosophical Speculations — Habit of Cautious and Comprehensive Induction exemplified in Answer to Letter of Mr. Jefferson, on Relative Condition of Laboring Poor in Europe and America 70–96

CHAPTER XXIV.

Commissioners appointed by Virginia recommend Meeting of the proposed Politico-Commercial Convention to be held at Annapolis, on the second Monday of September — Mr. Madison's Solicitude respecting the Success of the Convention — He answers, with Firmness and Decision, the Objections made to the proposed Plan of Proceeding — Important Report in Congress, urging upon the States the Adoption of the Revenue System, arranged by Mr. Madison in 1783 — Formal Refusal of Legislature of New Jersey

to comply with a Requisition of Congress — Proposal of Mr. Jay to surrender the Navigation of the Mississippi to Spain, for a Term of Years, in Consideration of certain Commercial Stipulations — Earnestly sustained by the Eastern States and by New York — Warmly opposed by the Southern States — The Policy of the Middle States, for a Time, in Suspense — Strong Disapprobation of the Proposal expressed by Mr. Madison — He sets out to the North, and visits Congress — Antagonism of Northern and Southern Parties in that Body carried to a great Height, in consequence of Mr. Jay's Projected Treaty with Spain — Letter of Mr. Madison to Mr. Jefferson, describing Inauspicious Influence of this State of Things on Prospects of Annapolis Convention — Able Paper presented by Virginia Delegation in Congress, in Opposition to Mr. Jay's Project — Proceedings in Congress upon it — Remarkable Letter of Mr. Monroe, then Member of Congress, asserting the Existence of a Project on the Part of the Eastern States and New York for the Establishment of a Separate Confederacy — Proceedings of the Convention at Annapolis — It recommends the Assembling of another Convention, with General Powers, to meet in Philadelphia the following Year . . 97–130

CHAPTER XXV.

Mr. Madison returns to Virginia to attend the Annual Meeting of the Legislature — Prepares and introduces a Bill for the Appointment of Commissioners to the Proposed Convention at Philadelphia — Bill passed, and Commissioners appointed — Lead of Virginia promptly followed by the Middle States — Proceedings of the Legislature on the Project before Congress for the Relinquishment of the Mississippi — Spirited Remonstrance against it drawn by Mr. Madison — Petitions for an Issue of Paper Money — Opposed by Mr. Madison, and rejected — Act authorizing Tobacco to be received in Payment of Public Dues — Instalment Law proposed — Earnestly resisted by Mr. Madison, and finally defeated — Repeal of Act for Incorporation of the Protestant Episcopal Church — One of the Petitions for its Repeal drawn by Mr. Madison — Continues his Arduous Labors in connection with the General Revision of the Laws — Tribute by Judge Pendleton and Mr. Jefferson to the Value and Importance of his Services in that great Work — Reasons for not renewing at the Present Session his Efforts with regard to the Question of the British Debts — Financial Embarrassments of the State and Country — Summary Review of Mr. Madison's Services and Labors during

his Career in the Legislature of the State — Again appointed one of the Delegates of Virginia to the Congress of the Confederation 131–163

CHAPTER XXVI.

Civil Commotions in Massachusetts pave the way for Reform of Federal Constitution — Character and Origin of those Commotions — Measures taken by Congress to aid in their Suppression — Insurgents embodied under lead of an Ex-continental Officer, Daniel Shays — Insurrection finally subdued by State Authorities — Leaves a Profound Uneasiness for the Stability of Government and Public Order — Marked Change in the Feeling and Policy of Massachusetts and the New-England States towards the Confederation — Deputies appointed by them to the proposed Convention at Philadelphia — Sanction of Congress given to the Convention — Spirit manifested by New York — Mr. Madison's Account of Parties in Congress with regard to Change in Federal System — Existence of a Quasi-monarchical Party — Sagacious Reflection of Washington upon it — Mysterious State of Mr. Jay's Negotiation with Spain for Occlusion of Mississippi — Indignation in Western Country — Mr. Madison proposes Call for Information — Successive Motions made by him to arrest the Negotiation — Rapid Decline of Party in Favor of the Project — Its ultimate Abandonment — Negotiations with Great Britain respecting Western Posts, detained contrary to Treaty of Peace — Prior Violations of the Treaty, on the part of America, alleged by the British Minister — Report of Mr. Jay, admitting Infractions of the Treaty by several of the State Legislatures — Appeal of Congress to the Legislatures to revoke their Obnoxious Acts — Want of Authority in Congress to enforce Treaties, one of the most Urgent Objects of Reform in the approaching Federal Convention 164–207

CHAPTER XXVII.

Preparations of Mr. Madison for Labors of Federal Convention — Paper compiled by him on Ancient and Modern Confederacies — Important Paper on "Vices of Political System of United States" — Leading Principles of his Political Creed — Rights of the Minority — Essential Safeguards in Republican Government — Abuses of the State Legislatures — Testimony, on the Subject, of Mr. Jefferson and Colonel Mason — Colleagues of Mr. Madison

in the Convention — Correspondence with General Washington on Question of his Acceptance — Opinions of Washington with regard to Defects of Confederation — Mr. Henry declines his Appointment — Probable Reasons of his Refusal — Character and Opinions of Governor Randolph — Judge Blair, his Character and Opinions — Colonel Mason's Acceptance, and General Sentiments towards Object of the Convention — Mr. Wythe, Sketch of his Character and Career — Dr. M'Clurg appointed in place of Mr. Henry 208–253

CHAPTER XXVIII.

Mr. Madison's Opinions respecting Nature of Reforms in Federal System — His Letter to General Washington on the Subject — Congressional Negative on State Laws — Power of Judiciary to declare null and void Laws contrary to the Constitution, then unsettled — History of the Question — Early Decisions of the Courts of Virginia upon it — Opinions of Judges Pendleton and Wythe — Meeting of Federal Convention — Washington elected President of the Convention — Characters of Delegates from the Several States — Delegation of Pennsylvania, Franklin, Morris, Wilson, &c. &c. — Of New Hampshire, Langdon and Gilman — Of Massachusetts, Gerry, King, &c. &c. — Of Connecticut, Johnson, Sherman, and Ellsworth — Of New York, Hamilton, Yates, and Lansing — Of New Jersey, Livingston, Patterson, &c. &c. — Of Delaware, Dickinson, Read, &c. &c. — Of Maryland, M'Henry, Carroll, Mercer, &c. &c. — Of North Carolina, Alexander Martin, Davie, Williamson, &c. &c. — Of South Carolina, Rutledge, the Pinckneys, &c. — Of Georgia, Few, Baldwin, &c. — Tribute of Mr. Madison to Character of the Convention — He prepares to report their Proceedings and Debates 254–312

CHAPTER XXIX.

Propositions of the Virginia Delegation submitted to the Convention — Proceedings upon them in Committee of the Whole — Proposed New Government to act upon Individuals, not States — Proportional or Equal Representation of the States in the Federal Councils — Gordian Knot of the Convention — Madison, Read, Patterson, Wilson, Franklin — Direct Representation of the People, in one Branch of the National Legislature, advocated by Colonel Mason and Mr. Madison — General Denunciation of the Evils of Democ-

racy — Sherman, Gerry, Mason, Randolph — Line of Demarcation between Republicanism and Democracy — Convention averse alike to Monarchy and Democracy — Power of Coercion against the States opposed by Mr. Madison, and abandoned — Executive Department — Convention decide in Favor of Single, instead of Plural, Executive — Danger of Monarchy, from Corruption of People and their Leaders — Prophetic Views of Dr. Franklin — Functions and Mode of Appointment of Federal Judiciary — Term of Service of Popular Branch of Legislature — Noble and Manly Rule of Political Conduct avowed by Mr. Madison — He advocates a Firm and Stable Senate as Counterpoise to Popular Branch — Enlightened Sentiments of Governor Randolph — Virginia Propositions, with Partial Modifications, agreed to in Committee of the Whole, and reported to the Convention — New-Jersey Plan brought forward — Colonel Hamilton opposed to both Virginia and New-Jersey Plans — Suggests a Plan of his own — Outline of his Speech and Plan — They meet with little Favor in the Convention — New-Jersey Plan rejected by Committee of the Whole — Virginia Propositions, as modified, again reported to the Convention — Apocryphal Draught of a Federal Government by Mr. Charles Pinckney, of South Carolina 313–357

CHAPTER XXX.

Virginia Propositions, as reported by Committee of the Whole, acted on in Convention — Motion of Mr. Lansing, of New York, in Favor of Single Legislative Body and Equal Representation of all the States, gives rise to Animated Discussion — Colonel Mason, Luther Martin, Sherman, Wilson — The Motion negatived — Proposition of Mr. Ellsworth to refer Compensation of Members of Congress to State Legislatures, rejected — Mr. Madison insists on Restriction to prevent Members from voting themselves an Increase of Pay during their Current Term of Service — Question on Duration of Senatorial Office — Able and Earnest Speech of Mr. Madison for giving it Sufficient Stability to countervail Democratic Tendencies — Renewed Struggle for Equal Representation of the States in both Branches of the National Legislature — Vehement Speech of Mr. Luther Martin — Temperate and Dignified Reply of Mr. Madison — Discussion continued between Mr. Wilson and Mr. Sherman — Dr. Franklin moves for Daily Religious Services in the Convention — Debate on Question of Representation resumed — Dr. Johnson, Mr. Ellsworth, Mr. Read, Mr. Gorham, Colonel Hamilton, Mr. Gerry — Second Speech of Mr.

Madison — Motion for Equal Representation in First Branch of Legislature rejected — Mr. Ellsworth moves Equal Representation in Second Branch as a Compromise — Debate between Mr. Ellsworth and Mr. Wilson — Mr. Madison replies to Mr. Ellsworth — Shows that the Real Division of Interests in the United States is not between the Large and the Small States, but between the Northern and the Southern — Constitutional Means of Defence demanded by this Difference of Interest — Discussion continued — Mr. Sherman; Mr. Davie, of North Carolina; Dr. Franklin; Mr. Dayton, of New Jersey — Altercation between Mr. King, of Massachusetts, and Mr. Bedford, of Delaware — Convention equally divided on Mr. Ellsworth's Proposition — General Binckney, of South Carolina, moves Appointment of Committee to consider and report a Plan of Compromise 358–384

CHAPTER XXXI.

Committee of Compromise make their Report — Proceedings of Convention on Report of Committee — Apportionment among the States of Representatives in First Branch of Legislature — Mr. Williamson, of North Carolina, proposes to include Three-fifths of the Slaves in the Rule of Apportionment — Debate between Mr. Gouverneur Morris and Mr. Madison — Mr. Williamson's Motion rejected — Indignant Feeling of the Delegates of the Southern States — Convention reconsider and change their Decision — Struggle for Geographical Ascendency — Mr. Gouverneur Morris declares it to be the Policy of the Middle States to join the Eastern States in this Struggle for Power — Answered by Mr. Wilson — Early Jealousy of the Northern States with regard to the Rising States of the West — Equal Representation in the Second Branch of the Legislature — Discussion upon it renewed with Great Warmth — Mr. Wilson, Mr. Luther Martin, Mr. Charles Pinckney, Mr. Dayton, Mr. Sherman, Mr. Gerry, Mr. King, Mr. Strong — Speeches of Mr. Madison and Mr. Wilson — Report of Committee of Compromise, as amended, finally agreed to by Vote of Five States to Four, and One divided — Convention resume their Deliberations on Propositions reported by Committee of the Whole — Proposed Negative of Congress on State Laws superseded by Provision for Judiciary Control — Proposed Appointment of Executive by National Legislature strongly objected to, but maintained — Proposition to refer Election directly to People receives Vote of only One State — Sentiments of Colonel Mason upon it — Ineligibility a Second Time, hitherto an inseparable Part of the

Provision for electing Executive by National Legislature, stricken out by Vote of Convention — Dr. M'Clurg, of Virginia, moves, as the only Means left of guarding the Mutual Independence of the two Departments, that the Executive should hold during Good Behavior — Course of Virginia Delegation, and of Mr. Madison particularly, on this Motion — The Motion has the intended Effect of re-instating Ineligibility a Second Time as an Incident to Legislative Appointment of the Executive — Various other Modes of electing the Executive proposed and discussed — Choice by Lot suggested — Convention, without being able to reach any Satisfactory Conclusion on the Subject, acquiesce, for the present, in the Proposed Appointment by the National Legislature — All the Remaining Propositions, reported by Committee of the Whole, adopted with little or no Alteration by the Convention, and with the other Resolutions of the Convention referred to a Committee of Detail, to report a Constitution conformably to them . . 385–424

CHAPTER XXXII.

Constitution reported by Committee of Detail — Proceedings on it in Convention — Right of Suffrage in Election of Representatives — Principles of Convention opposed to Universal Suffrage — Cautious Policy of Convention with regard to Admission of Foreigners to Political Privileges — Warm Debate on Clause restraining Origination of Money Bills to House of Representatives — Single Instance of Separation, in their Votes, between General Washington and Mr. Madison — Contest respecting Ineligibility of Members of Congress to other Offices — Enumeration of Powers of Congress — History of Bargain, entered into between the Eastern States and two of the Southern States, respecting Slave Trade, and Regulation of Commerce — Strong Dissatisfaction and Disgust of several Members of the Convention, particularly Colonel Mason — Mr. Madison's Views of the True Balance of Interests among the Different States, with regard to Future Commercial Policy of the Government — Separate Powers of Senate — Difficulties in Organization of Executive Department cause it to be postponed to last Days of Convention — Complete Unanimity with regard to Independence of Judiciary — New Plan brought forward by a Committee respecting Mode of Appointment and Official Tenure of Executive — Action of Convention upon it — Proposition of Colonel Mason, for Council of State to President, sustained by Mr. Madison, Dr. Franklin, Mr. Wilson, and Mr. Dickinson — Committee of Five appointed to revise Style and Arrangement of

Articles in Constitution — Question on Adoption of Constitution as a Whole — Declarations of Governor Randolph, Colonel Mason, Mr. Pinckney, and Mr. Gerry — Proposition for signing Constitution moved by Dr. Franklin — His Impressive Remarks on the Occasion — General Washington, from the Chair, before putting the Question, asks leave to submit a Proposition, which is unanimously adopted — Appeal of Dr. Franklin for like Unanimity in the Signature of the Constitution enforced by several Members — Three only withhold their Signatures — Closing Scene of the Convention 425–475

CHAPTER XXXIII.

Constitution transmitted to Congress — Attempts in that Body to embarrass its Progress made by Richard Henry Lee of Virginia, Mr. Dane of Massachusetts, and Melancthon Smith of New York, foiled by Mr. Madison — Constitution referred to Conventions of the People in the Several States — Characters of the Parties for and against it — Undergoes Public Discussion — Essays of the "Federalist" — Mr. Madison's Participation in that Work — Authentic Statement of his Contributions to it — Fifteen of the Numbers written by him, claimed for Colonel Hamilton — Analysis and General Review of his Portion of the Work — Respective Merits of Mr. Madison and Colonel Hamilton in relation to it — Different Inspirations under which they wrote — Other Contemporary Publications on the Great Question of the Day — Mr. Adams's "Defence of the Constitutions of the United States" — Character of it — Mr. Madison's Remarks on it — Reception of it by the Public — Dissent of Samuel Adams and Roger Sherman from its Leading Doctrines — Striking Criticism of it by Bishop Madison, of Virginia — Friendly Discussion of its Doctrines in Correspondence of Mr. Jefferson with the Author — Similar Correspondence between Mr. Madison and Mr. Adams, containing Mr. Madison's Exposition and Hopeful View of the *Republican* Theory of the Constitution — Proceedings of Convention of Pennsylvania, the First called to decide upon the Acceptance of the Constitution — Political Parties in that State — Vehement Contentions between them — Mr. Findley, Mr. Smilie, and Mr. Whitehill, the Leading Opponents of the Constitution in the Convention — Mr. Wilson and Chief Justice M'Kean, its Principal Defenders — Convention decide for Ratification by Majority of Two to One — The Conventions of Delaware, New Jersey, Georgia, and Connecticut, successively ratify the Constitution; the three first by Unanimous

Votes, the last by very large Majority — Honors voted to Mr. Madison by Faculty and Trustees of Princeton College, New Jersey — Letters addressed to him by Dr. Witherspoon . . . 476–518

CHAPTER XXXIV.

Convention of Massachusetts — Political Parties of that State — Prevailing Jealousy of Federal Power — Samuel Adams, Mr. Hancock, Nathan Dane — Letters of Mr. King and Mr. Gorham to Mr. Madison, describing Composition and Divisions of the Convention — Singular Social Contrasts exhibited in the Body — Their Influence on its Deliberations — Specimens of ultra-Democratic Jealousy and Doctrine — Constitution ably and eloquently supported by Mr. Ames, Mr. Parsons, Governor Bowdoin, and Mr. King — Friends of the Constitution resort to the Expedient of Propositions of Subsequent Amendment — Ratification finally carried by small Majority — Convention of New Hampshire meets, and adjourns without coming to a Decision — Proceedings in Maryland — Constitution vigorously opposed there by Mr. Luther Martin and Mr. Samuel Chase — Unqualified Ratification voted by large Majority of her Convention — Convention called in South Carolina — Preliminary Discussions in the Legislature — Mr. Rawlins Lowndes, the Great Adversary of the Constitution there — Answer of Mr. Charles Cotesworth Pinckney to the Objections urged against vesting in Congress Unrestricted Power of regulating Commerce — Convention ratifies Constitution by large Majority, with Recommendatory Propositions of Subsequent Amendment — Virginia, Great Battle-field of the Controversy on Adoption of the Constitution — Richard Henry Lee, George Mason, and Patrick Henry, Leaders of the Opposition to it — The late Governors, Nelson and Harrison, also opposed to it — Judge Pendleton unites with Washington, Madison, Wythe, and Blair, in Support of it — Activity and Zeal of the Opposition described by General Washington — Meeting of the Legislature — Its Sentiments at first favorable to the Constitution — Great Change effected by Personal Influence and Exertions of Mr. Henry and Colonel Mason — Convention not to meet until June of the following Year — Mr. Henry commits the Legislature to the Policy of Amendments — Anecdote in a Letter of Mr. Monroe to Mr. Madison, showing Omnipotence of Mr. Henry's Influence in the Legislature — Letter from Mr. Madison to Mr. Jefferson, then in Paris, describing in detail the State of Parties and Public Opinion in Virginia relative to the Constitution —

Course of the three Great Leaders of the Opposition, Colonel Mason, Mr. Lee, and Mr. Henry — Letter of Rev. John B. Smith, President of Hampden Sidney College, giving an Account of Mr. Henry's Arguments and Exertions among the People — Position of Governor Randolph — Elections for the Convention — Solicitude of General Washington, that Mr. Madison should be a Member — Correspondence between them on the Subject — Earnest Applications to him from his County — He is elected — General Result of the Elections leaves the Issue on the Constitution in some Doubt — Second Letter of Mr. Madison to Mr. Jefferson on the State of Parties in Virginia — Geographical Classification of the Sentiments of the Different Divisions of the State — Mr. Monroe's Opinions — Successive Phases of Mr. Jefferson's Opinions on the Adoption of the Constitution — Finally declares himself warmly for its Adoption — His Letters to Mr. Carmichael, General Washington, and Mr. Rutledge . . 519–558

CHAPTER XXXV.

Convention of Virginia assembles at Richmond — General Character and Composition of the Body — Interest excited by its Deliberations — Order of Discussion agreed on, but not followed — Discussion opened by Mr. George Nicholas on the Side of the Constitution — Mr. Henry launches into a General Invective of the Constitution — He is supported by Colonel Mason — Reply of Governor Randolph — Remarks of Mr. Madison — Able and Impressive Speech of Mr. Pendleton — Followed by Colonel Henry Lee and Mr. Corbin — Mr. Henry renews his Attack on the Constitution in an Elaborate Speech, reviewing its Various Provisions — Victorious Defence of the Constitution by Mr. Madison in Reply — Profound Impression made by it — Letter of Mr. Bushrod Washington, a Member of the Convention, to his Uncle, General Washington — Mr. Henry returns to the Attack with Undiminished Zeal — Animated and Personal Debate between him and Governor Randolph — Temperate Speech of Mr. Monroe against the Constitution, with Particular Reference to Taxation — Mr. Marshall enters into the Discussion with his Characteristic Clearness and Ability — Followed by Mr. Nicholas in a Second Speech — Second Speech of Colonel Mason — Lucid and Able Reply of Mr. Madison to the Argument of Mr. Monroe — Mr. Grayson, in an Ingenious and Imposing Speech, and on Grounds peculiar to himself, opposes the Constitution — Answered by Mr. Pendleton and Mr. Madison — Episode introduced by Mr.

Henry respecting Proceedings of Congress on Navigation of Mississippi — Statements of Mr. Monroe and Mr. Grayson — Calm and Magnanimous Bearing of Mr. Madison — Appeals of Mr. Henry and Colonel Mason to Local and Particular Interests — Their Effect — Division of Opinion in Convention, at this time, exceedingly Close, and Issue Doubtful — Letter of Mr. Madison to General Washington — General Debate on the Constitution closed, and Discussion on the Text, Clause by Clause, begins — Friends of the Constitution now make Visible Gains — Explanation and Defence of the Several Provisions of the Constitution devolves mainly on Mr. Madison — Discussions with Mr. Henry — Comparison between them as to Manner and Style of Debate — Discussion on the Text of the Constitution closes — Opponents of Constitution despond — Imprudent Speech of Colonel Mason — Letter of Mr. Madison to General Washington — Mr. Wythe moves Ratification of Constitution, with Propositions of *Subsequent* Amendment — Mr. Henry insists on *Previous* Amendments, and moves Substitute for Mr. Wythe's Proposition — Three Days' Discussion on these Rival Propositions — Renewed Contest between Mr. Madison and Mr. Henry — Mr. Wythe's Proposition carried by Majority of Eight Votes — Committee appointed to prepare Form of Ratification — Report of Committee agreed to — Argument in Favor of Right of Peaceable Secession attempted to be drawn from Form of Ratification in Virginia — Testimony against it furnished by Contemporary Letters of Mr. Madison to General Washington and Colonel Hamilton — Uniform Opposition of Mr. Madison to the Doctrine — His Letter to Mr. Everett — Antagonism and Intellectual Combats between Mr. Henry and Mr. Madison in Convention of Virginia, a Stirring Spectacle — Described by a Contemporary and Eye-witness — Instructive Lesson to be derived from it — Character of Mr. Madison's Eloquence — Persuasive Power and Effect of it established by Concurring Testimony of Chief Justice Marshall, Mr. Jefferson, and Mr. Gallatin 559–613

CHAPTER XXXVI.

Convention of New Hampshire re-assembles, and ratifies Constitution — This Fact not known to Convention of Virginia, at Time of its Action — Brief Review of Leading Objections urged against Adoption of the Constitution — Consolidation — Aristocracy — Objections viewed in Light of Experience, as well as Philosophy — Testimony of De Tocqueville — Actual Working of the Con-

stitution the reverse of Aristocratic — Power of mere Numbers — Warning of Jefferson — Rejoicings at Acceptance of Constitution by Virginia — Convention of New York — Divisions in that Body — Opposition to Constitution headed by Governor Clinton and Messrs. Yates, Lansing, and Melancthon Smith — Its Leading Advocates, Hamilton, Jay, Chancellor Livingston, and Duane — Large Majority of Convention opposed to Constitution — Expedients to obtain a Ratification — Right to secede, in certain Contingencies, proposed — Strong Protest against it in Letter from Mr. Madison to Colonel Hamilton — Call of another Convention agreed to as Price of Ratification — Deprecated by General Washington and Mr. Madison — Signal for Renewed Opposition to the Constitution in Pennsylvania, North Carolina, and Rhode Island — Legislature of Virginia, under Lead of Mr. Henry, recommences War upon the Constitution — New York gives no Vote in Presidential Election, and fails to appoint Senators during First Session of Congress — Proceedings of Congress for putting New Government into Operation — Efforts of Colonel Hamilton and his Colleagues, to obtain Seat of Government for New York, finally succeed — Letters of Mr. Madison to General Washington on this Subject — Correspondence between Mr. Madison and Mr. Jefferson on Bill of Rights — Secret History of Opposition to the Constitution in certain Quarters — Proposed Amendments — Mr. Madison's Opinions on the Subject — Mr. Henry carries Resolutions through Legislature of Virginia for Call of another Convention — Letter of Colonel Carrington to Mr. Madison, giving an Account of these Proceedings — Friends of Mr. Madison put him in Nomination for Senate of United States — His Preference for House of Representatives — Letter on the Occasion to Governor Randolph — Course of Mr. Henry in the Senatorial Election — Endeavors to defeat Mr. Madison's Election to House of Representatives by *gerrymandering* his Congressional District — Animated Canvass between Mr. Madison and Mr. Monroe for Congress — Mr. Madison elected — General Result of the Elections in Virginia 614–657

LIFE AND TIMES

OF

JAMES MADISON.

CHAPTER XXI.

Legislative Vacation — Mr. Madison resumes his Literary, Legal, and Scientific Studies — Made Doctor of Laws by College of William and Mary, in Virginia — Disordered Situation of the Confederacy — Commercial Embarrassments and Distress resulting from Selfish Policy of British Government — Proposition to invest Congress with Power to regulate Commerce with Foreign Nations — Able Letter of Mr. Madison on the Subject — First Acquaintance and Correspondence with Mr. Monroe, then a Delegate from Virginia to Congress — Character of Mr. Monroe — Secret History of Congress — Parties growing out of Foreign Appointments — Mr. Adams appointed Minister to England — Mr. Jefferson, to France — Mr. Jay, Secretary for Foreign Affairs — Congress removes from Trenton to New York — Divided Opinions of the Leading Men of Virginia on the Proposed Grant to Congress of the Power over Commerce — Richard Henry Lee and Col. Grayson — Washington and Jefferson — George Mason and Patrick Henry.

In the last chapter we somewhat departed from the strict laws of chronological arrangement, in order to follow to its conclusion the great contest for religious freedom, in which Mr. Madison bore so leading a part. The consummation of that

memorable struggle took place during the session of the legislature in the autumn of 1785. But, as the year 1785 was marked by other events of great significancy in the history of the country, with which Mr. Madison had a most important connection, we must now revert to its commencement, and follow it in the regular course of its developments.

The legislature, which began its session in October, 1784, adjourned on the 5th day of January, 1785, when Mr. Madison, released temporarily from his public duties, returned to the quiet of his father's residence in the county of Orange. There, we learn from his correspondence, he resumed, as far as his other occupations would permit, the legal studies on which he had entered with so much earnestness when he retired from Congress. At the same time, he amused his leisure with occasional researches in natural history, for which he acquired an early taste from the writings of Buffon, of whose grand views of nature, and the noble eloquence with which they were unfolded, he was a passionate and sympathizing admirer.

The fruits of this taste, which formed an additional bond of union between him and the philosopher-statesman of Monticello, often appeared in the future course of his life, as we shall have occasion to observe. For the present, we give a brief extract from a letter addressed by him to Mr. Jefferson, then in France, on the 27th of

April, 1785, which exhibits a picture of simple and unsophisticated tastes and pursuits, so much in contrast with the feverish and unremitting excitements, and the all-absorbing professional monomania, of the modern politician's life, that many, perhaps, will find it difficult to comprehend its reality. After thanking his correspondent for various rare and valuable works, literary and scientific, procured for him in Europe, he says: —

"Of Buffon, I have his original work of thirty-one volumes, ten volumes of his supplement, and sixteen volumes on birds. I shall be glad of the continuation, as it may, from time to time, be published. I am so pleased with the new-invented lamp, that I shall not begrudge two guineas for one of them. I have seen a pocket compass of somewhat larger diameter than a watch, and which may be carried in the same way. It has a spring for stopping the vibration of the needle, when not in use. One of these would be very convenient in case of a ramble in the western country.

"In my walks for exercise or amusement, objects frequently present themselves which it might be matter of curiosity to inspect, but which it is difficult or impossible to approach. A portable glass would consequently be a source of many little gratifications. I have fancied that such a one might be fitted into a cane, without making it too heavy. On the outside of the tube might be engraved a scale of inches, &c. If such a project could be executed for a few guineas, I should

be willing to submit to the price. If not, the best substitute, I suppose, will be a pocket telescope, composed of several tubes, so constructed as to slide the lesser into the greater."

Among the amiable cares which occupied Mr. Madison, during the intervals of his public employments, was the educational guardianship of two favorite nephews of Mr. Jefferson, — the sons of a widowed sister, Mrs. Carr. One of them was sent, by his advice, to a distinguished classical school[1] in Williamsburg: the other was placed at Hampden Sidney College, in the county of Prince Edward. Of their progress and standing in their respective schools, Mr. Madison made frequent reports to Mr. Jefferson, and watched over them, at all times, with fraternal interest. With what promptitude and fidelity he entered on this delicate and confidential trust, committed to him by his friend on his departure from America,[2] appears

[1] Of which Walker Maury was head-master.

[2] The following passage of the letter by which this interesting charge was committed to Mr. Madison, written the 8th of May, 1784, — the day after Mr. Jefferson's appointment by Congress to join Dr. Franklin and Mr. Adams in the negotiation of Treaties of Commerce with the powers of Europe, — is a pleasing proof of Mr. Jefferson's domestic sensibilities, as well as of the confidence reposed by him in his friend: "I have a tender legacy to leave you on my departure. I will not say it is the son of my sister, though her worth would justify my resting it on that ground; but it is the son of my friend, — the dearest friend I knew, — who, had fate reversed our lots, would have been a father to my children. He is a boy of fine dispositions, and of sound, masculine talents. I was his preceptor myself as long as I staid at home; and, when I came away, I placed him with Mr. Maury. There is a younger one, just now in his Latin rudiments. If I did not fear to overcharge you, I would request you to recommend the best school for him."

from the same letter of which we have just given an extract: —

"Mr. Peter Carr," he says, "is, I hear, now in Williamsburg. He did not get there so soon as I expected; but I have not heard the circumstances which delayed him. On the best inquiries I could make for a situation for his younger brother, I could hear of none preferable to the academy in Prince Edward; and, accordingly, I recommended that in a letter to Mrs. Carr. I have received no answer, but am told by Mr. Underwood, her neighbor, that he is with a very competent person, who has lately opened a school convenient to her. If this be the case, it will be improper to remove him."

About this time the degree of Doctor of Laws was conferred on Mr. Madison by the college of William and Mary, in Virginia, — the venerable *alma mater* of many of those with whom he was now associated in the public service, though he himself had completed his education in another and distant State. This tribute to his distinguished career in the councils of the country was the more grateful to him, as it afforded him the assurance that no sentiment of jealousy, arising from his academic nurture elsewhere, had been allowed to diminish the confidence and affection with which he was regarded by the science and learning of his native State. Chancellor Wythe, who then superadded the duties of law-professor to those of his high judicial office, announced to

Mr. Madison the honor bestowed upon him, in the following characteristic letter, which, brief as it is, shows a tincture of that classical scholarship which sometimes wore the air of pedantry in its distinguished author: —

"I have the pleasure, sir, to forward to you the testimony, herewith enclosed, of our university. Distinctions of this kind will, I am persuaded, be not unacceptable, whilst we continue to bestow them on such men as Franklin, Jefferson, Rittenhouse, E. Randolph, John Page of Rosewell, &c., &c. *Cæteraque extra animum*, in the diploma, which may perhaps appear an obscure expression, is used by Tacitus, in the sense here intended, to signify those things which contribute not to the improvement of the mind. Permit me to subscribe myself,

"Your friend, GEORGE WYTHE.

"WILLIAMSBURG, February, 1785."

Mr. Madison's acknowledgment of the honor was expressed with the graceful modesty which belonged to his nature: —

"ORANGE, April 12, 1785.

"SIR, — I have been honored with yours of February, accompanying the testimony which the University of William and Mary has been pleased to bestow upon me. A distinction which is rendered so flattering, both by the character of those from whom it is received and of those with whom it associates me, calls for acknowledgments which I

should feel greater satisfaction in expressing, if I had less reason to distrust my title to it. Regarding it, however, as a proof that those who so worthily minister in the temple of science are disposed, not only to reward the merits of her illustrious votaries, but to patronize in the humblest of them a zeal for her service, I find in the sincerity of mine an offering which they will not refuse, and which I beg you, sir, in the most respectful manner to present to them.

"With great esteem and attachment,

"I am faithfully yours,

"J. MADISON, Jr.

"GEORGE WYTHE, Esq."

But, amid these congenial relaxations and pursuits, it was not possible for him to withdraw his mind wholly from the exigent and disordered condition of the affairs of the nation, in which, though disqualified for the present, by the constitutional rule of rotation, from taking part as a member of the national councils, he could not but feel the anxious interest of a patriot and former actor. The application made by Congress to the States for the grant of general funds to meet the engagements of the nation, which had been so ably enforced by him in the address of 26th April, 1783, had not yet received the concurring assent of the States necessary to give it effect. The worn-out and only remaining alternative, of requisitions upon the State legislatures for their assessed

quotas of contribution to the common treasury, was now less heeded than ever, as there was no longer a foreign enemy to be confronted in the field. The consequence was, that the national debt, the accruing interest upon which, even, was in several instances suffered to go unpaid, increased with fearful accumulation, public credit was compromised and dishonored, and private indebtedness, springing from or aggravated by the general disorder, kept pace with the public embarrassments.

To these evils were now added distresses of a new and more diffusive character. The return of peace had opened the ports of America to the unrestricted commerce of her late enemy. There was no authority lodged with Congress to regulate by law the commercial relations of the country with foreign nations, and the regulations attempted by a few of the States were rendered abortive and unavailing by the jealous and conflicting policy of their neighbors. If one imposed duties for revenue, or to foster its own trade, another would either throw its ports wide open, or offer more favorable terms to the foreigner. States having no ports of their own, and drawing their foreign supplies through those which had, submitted with impatience to the contributions levied upon their consumption by the imposts of the latter.[1] A

[1] In reference to this state of things, New Jersey, placed between the commercial States of New York and Pennsylvania, was likened, in the language of the day, to a cask tapped at both ends; and North Carolina, similarly situated with regard to Virginia and

scene of contention, internal conflict, and anarchy, thus arose in the commercial regulations of the different States, which placed the commerce of the country at the mercy of foreign powers.

The British Government, seeing this state of things upon the return of peace, declined the negotiation of any commercial treaty with the United States, and at the same time cut them off from the ancient and accustomed trade with the West-India Colonies, by an order in council of 2d July, 1783, which restricted the introduction of American productions there to British vessels exclusively, and shut out some of those productions, even when brought in British vessels. This injurious and unequal condition of the trade between the two countries began now to be most severely felt in America. The United States were inundated with British manufactures, virtually free of duty, which, entering into competition with the infant efforts of native industry that had sprung up during the war, overwhelmed them in the disproportioned contest. The navigation of the country, excluded from its principal and most profitable field of employment in the trade with the West Indies, rapidly declined, and seemed threatened with destruction. A general cry of distress arose from the suffering interests, and called upon the national councils to devise some efficient scheme

South Carolina, to a patient bleeding at both arms. Connecticut stood very much in the same position, between New York, on the one side, and Massachusetts and Rhode Island, on the other. — See Madison's Debates, &c., vol. II. p. 691–2.

of protection and defence against this renewed foreign oppression.

It is honorable to the State of Virginia, that — though she had no manufactures, and a very limited navigation of her own, to suffer from the effects of this illiberal proceeding on the part of a foreign government; and though, on the other hand, as a producer of many of the articles still allowed to be exported to the West Indies in British bottoms, her interests might well have inclined her to submission — she was, nevertheless, the first to denounce the proceeding by her public authorities as a national wrong, and to call for retaliation. At the autumnal session of her legislature, in 1783, three months after the promulgation of the British order in council in England, and but a few weeks after the knowledge of it in America, she passed an act to empower Congress to retaliate the injustice of England by a total prohibition of the importation of all British West-India produce into the United States in British vessels, involving, as a necessary consequence, the temporary sacrifice, at least, of her valuable exports to those colonies.[1] And when, on the 30th April, 1784, Con-

[1] This exertion of a prompt and vigorous national spirit deserves to be recorded in the words of the legislative enactment it produced: —

"Whereas it appears by an order of the King of Great Britain in council, bearing date the 2d day of July last, made under the express authority of his Parliament, that the growth or produce of any of the United States of America is prohibited from being carried to any of the British West-India Islands by any other than British subjects, in British-built ships, owned by British subjects, and navigated according to the laws of

gress adopted a resolution to apply to the States for the grant of a power, for fifteen years, to prohibit all commercial intercourse with any nation which shall not have entered into treaties of commerce with the United States, Virginia was again the first of all the States to comply with the recommendation, which she did by an act of her legislature passed within a month after the application of Congress.[1]

This recommendation of Congress, however, remained unexecuted, for the want of the necessary concurrence of all the States in the grant of the power applied for; and a yet wider and deeper question was now forced upon the consideration of the country, — whether, to wit, it was not essential to the ends of an efficient Federal government, at all times and under all circumstances, that Congress, as the common representative of the States, should be invested with a general power to regulate commerce with foreign nations, whether by

that kingdom: And whereas this proceeding, though but a temporary expedient, exhibits a disposition in Great Britain to gain partial advantages injurious to the rights of free commerce, and is repugnant to the principles of reciprocal interest and convenience, which are found by experience to form the only permanent foundation of friendly intercourse between States, —

"Be it, therefore, enacted, that the United States, in Congress assembled, shall be, and they are hereby, authorized and empowered to prohibit the importation of the growth or produce of the British West-India Islands into these United States in British vessels, or to adopt any other mode which may most effectually tend to counteract the designs of Great Britain with respect to the American commerce, so long as the said restriction shall be continued on the part of Great Britain; *provided* that this act shall not be in force until all the States in the Union shall have passed similar laws."

[1] See Henning's Statutes, vol. XI. p. 388–9.

duties, prohibitions, restrictions, or otherwise. The most lively practical interest in the subject was, of course, felt in the Northern and Middle States, to which the navigation of the country mainly belonged, and where both capital and labor had been employed, to a very considerable extent, in manufacturing industry.[1]

But, as a question of national justice and policy, connected with the independence and collective resources and prosperity of the whole Confederacy, it enlisted the attention of enlightened statesmen everywhere. Those statesmen of Virginia, who were animated with the national spirit which had hitherto so remarkably distinguished her public councils, could not be inattentive or indifferent to it. As early as December, 1784, Mr. Monroe, then one of her delegates in Congress, was earnestly occupied with the subject, and wrote to Mr. Madison, soliciting a free interchange of lights and opinions with him in regard to it. He soon after-

[1] Massachusetts was at that time the principal seat of the interests so injuriously affected by the commercial restrictions of the British Government; and it was there, accordingly, that public complaints on the subject were first addressed to the authorities both of the State and of the Confederacy. A statesman of great experience and of sagacious views, Governor Bowdoin, then presided over her councils; and, upon his recommendation, the legislature of the State not only adopted such regulations of trade for the protection of her industry as fell within the province of her separate authority, but, in July, 1785, passed resolutions appealing to Congress to recommend to the States the assembling of a convention for the revision of the articles of confederation, with a view to an enlargement of the Federal powers. These resolutions the delegates of the State in Congress thought themselves justified in declining to lay before that body; and they were subsequently abandoned.

wards brought forward a formal proposition in Congress, for such an amendment of the articles of confederation as should vest in that body the power of regulating commerce with foreign nations, under certain qualifications, and prepared an elaborate address to the legislatures of the States in support of the proposition, which Congress took up, from time to time, for consideration, without ever coming to a definitive resolution upon it.[1]

A copy of this address he sent to Mr. Madison on the 26th of July, 1785, with a particular request for his views on the subject which it discussed. Mr. Madison's answer is dated the 7th of August following; and, as it refers to a matter of the highest intrinsic importance, which stands also in close and immediate relation to the movements that led to the formation and establishment of the new constitution, and as Mr. Madison's subsequent agency in it was of a very ruling and influential character, we give here the entire letter: —

"I received, the day before yesterday, your letter of the 26th of July. I had previously received the report on the proposed change of the 9th article of the confederation, transmitted by Colonel Grayson; and, in my answer to him, offered such ideas on the subject as then occurred. I still think the probability of success or failure ought to weigh much with Congress in every recommendation to

[1] See this address in Bioren and Duane's edition of the Laws of the United States, vol. I. p. 49–52.

the States; of which probability, Congress, in whom information from every State centres, can alone properly judge.

"Viewing, in the abstract, the question whether the power of regulating trade, to a certain degree at least, ought to be vested in Congress, it appears to me not to admit of a doubt but that it should be decided in the affirmative. If it be necessary to regulate trade at all, it surely is necessary to lodge the power where trade can be regulated with effect; and experience has confirmed what reason foresaw, that it can never be so regulated by the States acting in their separate capacities. They can no more exercise the power separately, than they could separately carry on war, or separately form treaties of alliance or commerce. The nature of the thing, therefore, proves the former power, no less than the latter, to be within the reason of the Federal constitution.

"Much, indeed, is it to be wished, as I conceive, that no regulation of trade — that is to say, no restriction on imports whatever — were necessary. A perfect freedom is the system which would be my choice. But, before such a system will be eligible perhaps for the United States, they must be out of debt: before it will be attainable, all other nations must concur in it. Whilst any one of these impose on our vessels, seamen, &c., in their ports, clogs from which they exempt their own, we must either retort the distinction, or renounce, not merely a just profit, but our only

defence against the danger which may most easily beset us.

"Are we not, at this moment, under this very alternative? The policy of Great Britain — to say nothing of other nations — has shut against us the channels, without which our trade must be a losing one; and she has consequently the triumph, as we have the chagrin, of seeing accomplished her emphatic threats, that our independence should forfeit commercial advantages, for which it would not recompense us with any new channels of trade. What is to be done? Must we remain passive victims to foreign politics, or shall we exert the lawful means which our independence has put into our hands of extorting redress? The very question would be an affront to every citizen who loves his country.

"What, then, are those means? Retaliatory regulations of trade only. How are these to be effectuated? Only by harmony in the measures of the States. How is this harmony to be obtained? Only by the acquiescence of all the States in the opinion of a reasonable majority.

"If Congress, as they are now constituted, cannot be trusted with the power of digesting and enforcing this opinion, let them be otherwise constituted; let their numbers be increased; let them be chosen oftener, or let their period of service be shortened. Or, if any better medium than Congress can be proposed, by which the wills of the States may be concentred, let it be substituted;

or, lastly, let no regulation of trade, adopted by Congress, be in force until it shall have been ratified by a certain proportion of the States. But let us not sacrifice the end to the means: let us not rush on certain ruin, in order to avoid a possible danger.

"I conceive it to be of great importance that the defects of the Federal system should be amended, not only because such amendments will make it better answer the purpose for which it was intended, but because I apprehend danger to its very existence from a continuance of defects which expose a part, if not the whole, of the empire, to severe distress. The suffering part, even when the minor part, cannot long respect a government which is too feeble to protect their interests. But, when the suffering part comes to be the major part, and they despair of seeing a protecting energy given to the general government, from what motives is their allegiance to be any longer expected? Should Great Britain persist in the machinations which distress us, and seven or eight of the States be hindered by the others from obtaining relief by Federal means, I own I tremble at the anti-federal expedients into which the former may be tempted.

"As to the objection against entrusting Congress with a power over trade, drawn from the diversity of interests in the States, it may be answered: 1. That, if this objection had been listened to, no confederation could ever have taken

place among the States: 2. That, if it ought now to be listened to, the power held by Congress of forming commercial treaties, by which nine States may indirectly dispose of the commerce of the residue, ought to be immediately revoked: 3. That the fact is, that a case can be scarcely imagined in which it would be the interest of any two-thirds of the States to oppress the remaining one-third: 4. That the true question is, whether the commercial interests of the States do not meet in more points than they differ. To me it is clear that they do; and, if they do, there are so many more reasons for than against submitting the commercial interests of each to the direction and care of the majority.

"Put the West-India trade alone, in which the interest of every State is involved, into the scale against all the irregularities which may result from any probable regulation by nine States, and who will say that the latter ought to preponderate? I have heard the different interest which the Eastern States have, as carriers, pointed out as a ground of caution to the Southern States, who have no bottoms of their own, against their concurring hastily in retaliations on Great Britain. But will the present system of Great Britain ever give the Southern States bottoms? and, if they are not their own carriers, I should suppose it no mark either of folly or incivility to give our custom to our brethren, rather than to those who have not yet entitled themselves to the name of friends

"In detailing these sentiments, I have nothing more in view than to prove the readiness with which I obey your request. As far as they are just, they must have been often suggested in the discussions of Congress on the subject. I cannot even give them weight by saying that I have reason to believe they would be relished in the public councils of the State. From the trials of which I have been a witness, I augur that great difficulties would be encountered in every attempt to prevail on the legislature to part with power. The thing is not only unpalatable, but the arguments which plead for it have not their full force on minds unaccustomed to consider the interests of the State interwoven with those of the Confederacy, — much less as they may be affected by foreign politics, — whilst those which plead against it are not only specious, but in their nature popular, and, for that reason, sure of finding patrons.

"Add to all this, that the mercantile interest, which has taken the lead in rousing the public attention of other States, is, in this, so exclusively occupied in British commerce, that what little weight they have will be most likely to fall into the opposite scale. The only circumstance which promises a favorable hearing to the meditated proposition of Congress is, that the power which it asks will be exerted against Great Britain; and the proposition will consequently be seconded by the animosities which still prevail, in a strong degree, against her."

It was only a few months previous to the date of this letter, that a close and confidential correspondence was opened between Mr. Madison and Mr. Monroe, which continued, with rare interruptions, for near half a century, and which we shall often have occasion to draw upon for illustrations of the contemporary history of the country and of public transactions in which each of them bore an important part. Mr. Monroe was younger than Mr. Madison by just seven years. He was educated at William and Mary College, and, at the age of eighteen years, soon after the commencement of the war of the Revolution, took a lieutenant's commission in the army. He saw some of the hardest service of the war, distinguished himself by his ardent gallantry in the battle of Princeton, where he was wounded, and afterwards became aid to Lord Stirling, and, in that capacity, participated in the actions of Brandywine, Germantown, and Monmouth.

Failing in his efforts to raise a regiment subsequently in Virginia, he entered upon the study of the law under the auspices of Mr. Jefferson, and was successively, before the termination of the war, a member of the legislature and of the executive council of the State. Upon the return of peace, and in immediate succession to Mr. Madison, he was, in 1783, at the age of twenty-five years, elected one of the delegates of Virginia in Congress. He was now, by a second election, member of that body.

Mr. Madison's acquaintance with him was formed the year before, in Richmond. The first letter on the file of their correspondence is from Mr. Monroe, dated the 7th November, 1784, at Trenton, where Congress was then in session, transmitting a cipher to be used, when necessary, in their communications. A friendship of a most intimate character grew up between them, which, like that between Jefferson and Madison, though not without one or two transient intermissions, attended them to the close of their lives, and was warmly and affectionately cherished by each. It is a rare and noble spectacle in the history of humanity to see three men of such eventful lives, coming from the same State and neighborhood, united for so long a period by bonds of the closest friendship, and attaining in succession, one after another in the order of their ages, the supreme magistracy of their country, — a station, in their day at least, as exalted as any among men.

Mr. Monroe was less distinguished by original genius and philosophical breadth of views than either of the three friends; but he had a basis of good sense and sound judgment, fortified by untiring application and indomitable perseverance, which made him equal to every exigency of public affairs. His patriotism was of a noble cast, and his integrity, often tried, was recognized as a proverb; so that Mr. Jefferson, writing to Mr. Madison a year or two after the time of which we are now treating, and wishing to convey a

vivid conception of the rectitude of another whose character he was describing, says: "For honesty, he is like our friend Monroe: turn his soul wrong side outwards, and there is not a speck on it."[1] His sentiments always bore the impression of his military training; and, if his temper sometimes threw off a hasty spark, it was ever a scintillation of honor, and was soon extinguished in the current of those generous affections which nature had given him in large and overflowing measure.

The letters of Mr. Monroe to Mr. Madison, of this period, afford many glimpses of the state of parties in Congress, and of the interior proceedings of that body, which neither the secret journals, nor any other source of information hitherto opened to us, supply. Congress had adjourned from Annapolis, on the 3d day of June, 1783, to meet at Trenton, in New Jersey, on the 30th day of October following.[2] But the increas-

[1] Writings of Jefferson, vol. II. p. 90.

[2] Congress, on their adjournment from Annapolis, had appointed a COMMITTEE OF STATES, consisting of one member from each State, to constitute the actual and visible head of the government during its recess. Dissensions, however, soon arose in this provisional body; and it was finally broken up by the secession of three of its members, reducing the Committee of States below a quorum, a few weeks after its formation. This occurrence produced, at the time, a deep and painful impression upon the friends of the Confederacy. Mr. Madison, answering the inquiries of Mr. Jefferson from Paris respecting the causes of it, gives the following account of the affair, in a letter dated at Philadelphia, the 20th August, 1785: —

"You ask me to unriddle the dissolution of the Committee of States at Annapolis. I am not sure that I am myself fully possessed of the causes, — different members of Congress having differed in their accounts of the matter. My conception of it is, that the abrupt departure of some of the eastern delegates, which destroyed

ing apathy and carelessness of the members, ever since the termination of the war, prevented a sufficient number of States from being present, in the persons of their representatives, to form a Congress before the 30th of November. On that day, eight States were present; and Richard Henry Lee, who was now again one of the delegates of Virginia to the national council, was chosen its president.

The foreign relations of the country were among the earliest and most pressing subjects of its deliberations. The failure of Great Britain to surrender the posts still occupied by her troops within the territorial limits of the United States, — which she justified by the non-fulfilment of the Treaty of Peace, relative to the recovery of British debts, on the part of several of the States, — as well as her illiberal restrictions upon the trade with the West Indies, had produced great and general disgust. A communication recently made to Congress, through the channel of the French legation,[1] showed that Spain still persisted in her claim to the exclusive navigation of the Mississippi.

the quorum, and which Dana is said to have been at the bottom of, proceeded partly from irritations among the Committee, partly from dislike to the place of their session, and partly from an impatience to get home, which prevailed over their regard for their private characters, as well as for their public duties."

This account seems to be fully sustained by the statements of two of the inculpated parties, made in their correspondence at the time. — See letters of Mr. Dana of Massachusetts, and of Mr. Blanchard of New Hampshire, in "Life of Gerry," vol. I. p. 441–449.

Mr. Dick of New Jersey was the other secessionist.

[1] See Secret Journals of Congress, vol. III. p. 516–519.

The precarious and critical state of the relations of America with these two powers made it the more important to her to secure the influence and support of her ancient ally, by being ably represented at the court of France, from which Dr. Franklin had just applied for leave to withdraw, in consequence of age and infirmities. The appointment of a suitable successor to him, and of competent and experienced ministers to Great Britain and Spain, was felt, therefore, to be urgently called for by the national interests.

Foreign appointments had ever been the prolific source of personal and party feuds in Congress; and they proved to be so on the present occasion. The prospects of the candidates for the different missions depended much, it was thought, upon the order of time in which the several posts should be filled by Congress. The friends of Mr. Jefferson conceived that the proper place for him in the new diplomatic arrangements now to be made was that of Minister to France, where he had already resided several months as one of the joint commissioners to negotiate treaties of commerce with the powers of Europe, and where, it was understood, he had rendered himself particularly acceptable. There were those, however, according to Mr. Monroe, who, preferring that position for themselves or their friends, urged the appointment of Mr. Jefferson to Spain; and, with a view at once to dispose of him there, insisted that the mission to Spain was the one which should be first filled.

In rendering an account to Mr. Madison, on the 18th of December, 1784, of the complicated and refined game played in Congress, with regard to these appointments, Mr. Monroe represents Mr. Robert R. Livingston and Mr. Richard Henry Lee, who, in the former classification of parties in that body growing out of the foreign relations of the country, occupied antagonistic positions, as now strenuously acting together in urging the selection of Mr. Jefferson for the Court of Spain. In the same letter, he expresses a strong sense of the critical state of our relations with Great Britain, and of the immediate necessity of sending a minister there; the reasons of which opinion had been given by him, more in detail, in a previous letter of the 15th of November, in which he said: —

"My letter to Governor Harrison gave you what had taken place in Canada. I am strongly impressed with the hostile dispositions of the court towards us. Not only what I saw, but the information of all the American gentlemen lately from Great Britain, confirms it; and particularly one of Maryland, one of Pennsylvania, and Mr. Laurens, who is now with us. The former two have lately returned to the continent. We are certainly in no condition for war; and, while we preserve the honor and dignity of the United States, must earnestly endeavor to prevent it. If Great Britain will comply with the conditions of the late treaty, — as we must, on our part, do what it enjoins, — our situation is as happy as we could expect it. The

sooner we are ascertained upon this point, the better it will be for us."

Mr. Madison replied to Mr. Monroe on the 8th of January, 1785. The following extract from his answer will commend itself to the reader, by its justness, dignity, and frankness: —

"Yours of 18th ultimo came to hand yesterday. The view which it gives of the operations of the Cabinet portends, I fear, a revival of those intrigues and contests of ambition which have more than once distracted and dishonored the national councils. Foreign appointments have generally been the parents of these mischiefs, and ought, for that reason, when no other reasons oppose, to be rendered as unfrequent as may be. The union between Richard Henry Lee and Robert R. Livingston would have been among the last of my predictions; nor can I fathom the principles on which it is founded.

"The policy of healing the variance between the United States and Great Britain is, no doubt, obvious; but I cannot enter into the suspicions entertained of hostile designs in the latter. Her internal situation renders them extremely improbable, and the affairs of Ireland, as I conceive, absolutely incredible. What could she hope for, or aim at? If the late war was folly, a new one, for the same object, would be downright frenzy. Her ill-humor is the natural consequence of disappointed and disarmed ambition; and her disregard of the treaty may, if not be justified,

at least be accounted for, by what has passed in the United States. Let both parties do what neither can deny its obligation to do, and the difficulty is at an end.

"The contest with Spain has a more dangerous root. Not only the supposed interests, but the supposed rights, of the parties, are in direct opposition. I hope, however, that both parties will ponder the consequences, before they suffer amicable negotiation to become abortive. The use of the Mississippi is given by nature to our western country, and no power on earth can take it from them. While we assert our title to it, therefore, with a becoming firmness, let us not forget that we cannot ultimately be deprived of it; and that, for the present, war is more than all things to be deprecated."

The rival diplomatic pretensions, and the personal and political interests connected with them, kept Congress in suspense for more than two months, and were, it appears, the subject of frequent debates and much parliamentary manœuvring, during the whole of that period. At length, on the 24th February, 1785, a commencement was made towards untying this only less than Gordian knot, by the appointment of Mr. Adams, after several successive ballots, to the Court of Great Britain. The secret Journals of Congress, since published, having disclosed none of the details of the process by which this result was attained, we give the following revelation from a letter of Mr.

Monroe to Mr. Madison, of the 6th of March, 1785: —

"The arrangements in our foreign affairs," he says, "begin at length to assume some form. Upon whatever ground they were taken up, for a considerable time, either with respect to France, Spain, or Great Britain, the same difficulties arose." He then adds, that, with a view to promote some solution of these difficulties, "it was moved by Mr. Pinckney that the commissions to foreign ministers, unless renewed by Congress, should continue in force for only three years." This was negatived; but, being again renewed by the mover, and pressed upon Congress from other quarters, was at length carried. Upon several ballots, Adams had five votes; Livingston, four; and Rutledge, two. Jersey at length voted for Adams, having previously nominated and voted for Livingston; upon which Virginia and Maryland voted in favor of Adams, and gave him his appointment."

As it was upon Mr. Madison's motion, as we have heretofore seen, that the former commission of Mr. Adams, to negotiate a treaty of commerce with Great Britain, was revoked by Congress in 1781, it is gratifying to find in his answer to Mr. Monroe additional proof that the motion then made by him was unmixed with any personal feeling, and rested exclusively upon the basis on which he put it, at the time, of the equal and impartial consideration due from Congress to the rights and interests of the two great divisions of the Confede-

racy.[1] In acknowledging the receipt of Mr. Monroe's letter, he says: —

"The appointment of Mr. Adams to the Court of Great Britain is a circumstance which does not contradict my expectations; nor can I say that it displeases me. Upon geographical considerations, New England will always have one of the principal appointments; and I know of no individual from that quarter who possesses more of their confidence, or would possess more of that of the other States; nor do I think him so well fitted for any court of equal rank as that of London."

This first step being taken in the practical solution of the problem which had so long perplexed the deliberations of Congress, it was soon followed by the appointment of a minister to France, which, on the 10th of March, was unanimously conferred on Mr. Jefferson. For the present, no minister was appointed to Spain. Mr. Jay, who, as early as May, 1784, in anticipation of his return to the United States, was appointed secretary for foreign affairs, had recently (22d December, 1784) entered upon the discharge of the duties of that office.[2]

Congress had now removed from Trenton to New York. The deficient accommodations afforded

[1] See ante, vol. I. p. 347, 348.

[2] On the resignation of the office of secretary for foreign affairs by Mr. Robert R. Livingston, in 1783, Mr. Madison was much urged to allow himself to be named for it; but he refused. In his private correspondence he suggested the name of his friend, Dr. M'Clurg, afterwards one of the Delegates of Virginia in the Federal Convention of 1787, as possessing suitable qualifications for the office. — See Madison's Deb. & Cor. vol. I. p. 486, 502.

at the former place for conducting the business of the government, led to a reconsideration of the arrangements which had been entered into in the autumn of 1783 for the future residence of Congress, both temporary and permanent. On the question of adjourning to Philadelphia or New York as the temporary abode, the four Southern States (Maryland not being present) voted with Pennsylvania in favor of the former; but, New Jersey and the four Eastern States voting with New York against Philadelphia, it was finally determined to adjourn to the city of New York, where Congress re-assembled on the 11th of January, 1785. The resolution, which was passed in 1783 for the alternate residence of Congress on the banks of the Delaware and the Potomac, was rescinded by declaring it to be "inexpedient at this time to erect buildings for the accommodation of Congress at more than one place;" and three commissioners were appointed to lay out a district of not less than two nor more than three miles square on either side of the banks of the Delaware for the Federal town. A motion, made by the Delegates of Virginia to substitute "Georgetown on the Potomac" for the proposed site on the banks of the Delaware, received only the vote of one State, that is, their own. So short-lived was the alliance entered into on that subject but a year before by the Eastern with the Southern States.[1]

After disposing of these questions, with the im-

[1] For the nature of that alliance, see ante, vol. I. p. 489, 490.

broglio of the diplomatic appointments, Congress turned its attention to perfecting a plan for the disposal of the public lands, to the details of the annual requisition for supplies, and to devising some mode for the liquidation of the accounts of the several States with the Confederacy for expenditures and advances respectively made by them during the progress of the war. The proposition to obtain for Congress from the States the power of regulating commerce also continued, from time to time, to engage its deliberations. In a letter to Mr. Madison, of the 14th of August, 1785, Mr. Monroe recurs to the subject, and thus anxiously repeats his sense of its paramount importance:—

"The report upon the 9th article of confederation [proposing to add the regulation of commerce to the enumerated powers of Congress] will not, I believe, be finally determined until the winter. It will, however, probably be taken up for the sake of investigation, and be committed to the journals for public inspection. . . . If this report should be adopted, it gives a tie to the Confederacy which it hath not at present, nor can have without it. It gives the States something to act on,—the means by which it may bring about certain ends. Without it, God knows what object they have before them, or how each State will move, so as to move securely with respect to Federal or State objects."

We have seen how earnestly and unequivocally Mr. Madison, in his letter of the 7th of August to Mr. Monroe, had declared his opinion that both

principle and policy required the power over commerce to be added to those originally vested in Congress by the articles of confederation. At the same time, he could not but be sensible that such a proposition must encounter the determined opposition of minds cherishing local views or habitually jealous of federal power. As this question, in itself and its consequents, was destined to lay the foundation of a new and broad division of parties in Virginia, it will not be without interest to the reader to see how her leading men stood with regard to it at the moment of its presentation for public consideration.

Mr. Richard Henry Lee, the senior delegate of the State in Congress, and occupying the important position of president of that body, was warmly opposed to the grant of the proposed power to Congress. In a letter to Mr. Madison, of the 11th of August, 1785, he says: —

"It seems to me clear beyond doubt, that the giving Congress a power to legislate over the trade of the Union would be dangerous in the extreme to the five Southern or staple States, whose want of ships and seamen would expose their freightage and produce to a most pernicious and destructive monopoly. With such a power, eight States in the Union would be stimulated by extensive interest to shut close the door of monopoly, that, by the exclusion of all rivals, whether for purchasing our produce or freighting it, both of these might be at the mercy of our East and North. The spirit of

commerce throughout the world is a spirit of avarice, and would not fail to act as above stated. What little difficulty there would be in drawing over one of the five to join the eight interested States, must be very discernible to those who have marked the progress of intrigues in Congress."

In these sentiments Colonel Grayson, another of the Delegates of Virginia in Congress, was understood to thoroughly concur.

On the other hand, Washington was as decidedly in favor of the proposed grant. In a letter to a revolutionary companion and friend, Colonel M'Henry, then one of the Delegates of Maryland in Congress, written on the 22d of August, 1785,—just a fortnight after the date of Mr. Madison's letter to Mr. Monroe,—he says:—

"As I have ever been a friend to adequate powers of Congress, without which it is evident to me we never shall establish a national character, or be considered as on a respectable footing by the powers of Europe, I am sorry I cannot agree with you in sentiment not to enlarge them for the regulations of commerce. I have neither time nor abilities to enter into a full discussion of this subject; but it would seem to me, that your arguments against it, principally that some States may be more benefited than others by a commercial regulation, apply to every matter of general utility.

"Can there be a case mentioned in which this argument has not its force, in a greater or less degree? We are either a united people under one

head and for Federal purposes, or we are thirteen independent sovereignties eternally counteracting each other. If the former, whatever such a majority of the States as the Constitution points out conceives to be for the benefit of the whole, should, in my judgment, be submitted to by the minority. Let the Southern States always be represented; let them act more in unison; let them declare freely and boldly what is for the interest of, and what is prejudicial to, their constituents, and there will be, there must be, an accommodating spirit. In the establishment of a navigation act, this, in a particular manner, ought to and will, doubtless, be attended to. If the assent of nine States, or, as some propose, eleven, be necessary to give validity to a commercial system, that number will be required to insure this measure, or it cannot be obtained."

On the side of the proposed enlargement of the powers of Congress was also Mr. Jefferson, who, as soon as he was apprised of the measures in contemplation, wrote from Paris on the 1st of September, 1785, to Mr. Madison: —

"I am well informed that the late proceedings in America have produced a wonderful sensation in England in our favor. I mean the disposition which seems to be becoming general to invest Congress with the regulation of our commerce, and, in the mean time, the measures taken to defeat the avidity of the British government in grasping at our carrying business. I can add with truth that it was not till these symptoms appeared in America

that I have been able to discover the smallest token of respect towards the United States in any part of Europe." [1]

There were two other great leaders of public opinion in Virginia, George Mason and Patrick Henry, whose sentiments on the subject were not yet known, one or both of whom, there was reason to believe, would be arrayed in opposition to the proposed measure.

Mr. Madison's convictions, however, of both its wisdom and necessity, were early settled in his own mind; and, without stopping to count the odds for or against him, he devoted himself to the accomplishment of this reform, as the first step in the organization of an efficient common government for the Union, with the same zeal and singleness of purpose which he had so lately shown in the cause of religious freedom. He had been again elected by the county of Orange a member of the House of Delegates of Virginia; and as Congress had declined any final action on the report before it, under the idea that a proposition for enlarging its powers would come with a better grace and more advan-

[1] Mr. Jefferson again wrote to Mr. Madison on the 8th October, 1786, after hearing of the final action of the Legislature of Virginia in favor of the proposed grant to Congress of the power over commerce in the following very emphatic terms: "I have heard, with great pleasure, that our Assembly have come to the resolution of giving the regulation of their commerce to the Federal head. I will venture to assert, that there is not one of its opposers who, placed on this ground, would not see the wisdom of this measure. The politics of Europe render it indispensably necessary, that, with respect to every thing external, we be one nation, firmly hooped together. Interior government is what each State should keep to itself."

tage from the State Legislatures, he determined to inaugurate the movement at the approaching session of the body of which he was a member. Of the four distinguished characters above mentioned,[1] whose opinions were known to favor an enlargement of the powers of Congress for the object in question, he was the only one in a position to give it the desired initiative. But, before we accompany him in this new and not least arduous or eventful struggle of his public life, it will be proper to glance at a few of the incidents, in addition to those already referred to, which served to diversify the even tenor of his existence during the interval of his legislative duties.

[1] Washington, Jefferson, Monroe, and Madison.

CHAPTER XXII.

Mr. Madison declines going Abroad — Excursion made by him during Recess of the Legislature — Visits to Congress and to General Washington — Re-assembling of the Legislature — Characters of its Leading Members — Mr. Madison again appointed Chairman of Committee for Courts of Justice — Petitions from Seaport Towns bring up Question of Commercial Regulation — Resolution for vesting the Power in Congress opposed by the older Members — Mr. Madison's Speech in support of it — Carried in first instance, but subsequent limitation of its duration causes its friends to abandon it — Mr. Madison proposes a Plan of a Politico-Commercial Convention of the States, to consider the Expediency of enlarging the Powers of Congress for protecting the Trade of the Confederacy — Reception of his Plan favored by Contemporaneous Proceedings of Joint Commissioners of Maryland and Virginia, appointed to settle Jurisdiction over Adjacent Waters — History of those Proceedings — Able Letter of Mr. Madison to General Washington, in explanation of his Views — His Plan of a Convention adopted — Its Importance as the Initial Measure in the Series of those which led to the Formation and Establishment of the Constitution of the United States — Claims of Priority for other Movements considered — Mr. Madison's Steady Adherence to the Plan of Operations now commenced.

An invitation to visit Europe during the recess of the legislature was received by Mr. Madison from his friend Mr. Jefferson. It bore date from Paris, the 8th of December, 1784, and was arrayed in so many attractive circumstances as to render the temptation peculiarly strong.

"I find you thought it worth while to pass the last summer in exploring the woods of America, and I think you were right. Do you not think the men and arts of this country would be worth another summer? You can come in April, pass the months of May, June, July, August, and most of September here, and still be back to the commencement of real business in the Assembly following, which I would not have you absent from. You shall find with me a room, bed, and plate, if you will do me the favor to become of the family." Then giving an estimate of the various items of expense incident to the trip, which he put down at two hundred guineas, he adds: "You will, for that, have purchased the knowledge of another world. I expect Monroe will come in the spring, and return to Congress in the fall."

Mr. Madison's answer shows how deeply his mind was impressed with the vocation he had received to employ all his energies at home in the reconstruction of the political institutions of the country, and how strenuously he was preparing himself to fulfil that vocation. A self-imposed task of laborious study at the age of thirty-four years — the age he had then attained — is an example of conscientious and earnest discipline which the lives of few modern statesmen can present.

In writing to Mr. Jefferson on the 27th April, 1785, he says: —

"I cannot take my leave of you without making my acknowledgments for the very friendly invitation

contained in your last. If I should ever visit Europe, I should wish to be less stinted in time than your plan proposes. This crisis, too, would be particularly inconvenient, as it would break in upon a course of reading, which, if I neglect now, I shall probably never resume."

We learn from an incidental allusion in a letter of Mr. Jefferson of this period, that the friends of Mr. Madison had been desirous of placing him in one of the important foreign embassies recently filled by that body; and that he had been, at one time, actually put in nomination, while those appointments were under consideration. The same view of his public duties, which led him to decline the tempting invitation of Mr. Jefferson, caused him to withdraw his name from the flattering use made of it in Congress, as soon as he was apprised of the proceeding of his friends.[1] From an earlier period than this, indeed, it appears he had felt, that, in the trying scenes through which his country was passing, the post of highest usefulness and duty for him was in her domestic councils; and he allowed no prospect of personal gratification or of political advancement to tempt him from the field of labor which circumstances had prescribed to him.

The following extract of a letter addressed to him in August, 1780, by an intimate friend and kinsman, the Rev. Dr. Madison (afterwards Bishop of Virginia), discloses the fact, that, even at that

[1] See manuscript letter of 18th March, 1785, from Mr. Jefferson to Mr. Madison; and Mr. Madison's letter of 20th August, 1785, in reply.

early day, he declined an honorable foreign appointment: —

"Is it true," says this excellent and distinguished man, "that I had like to have lost my valuable correspondent and friend? We hear that you have refused an important place in a foreign embassy. If so, your refusal does you honor; but, at the same time, I think it would have been the highest gratification to a person who would have viewed the improvements and the state of Europe with a philosophical eye: and no doubt all the honors that America could confer would in time have succeeded. I am glad, however, that you preferred your *natale solum*, though I do not think I should have had resolution to have withstood so alluring a prospect; not that I suppose ambitious motives ought to have or could have any influence with you, but the knowledge to be obtained from such an appointment would have had real weight."

Mr. Madison had long desired to extend his personal knowledge of his own country by a visit to the Eastern States. Disappointed in his plans for that purpose the last season, he hoped to make the excursion during the present, in company with his friend Monroe, with whom he was in correspondence on the subject. The attractions, however, of an Indian Treaty, to be held on the banks of the Wabash, proved stronger for the young soldier-statesman than the allurements of Paris presented by Mr. Jefferson, or the Eastern excursion proposed by Mr. Madison. While he was pursuing his soli-

tary journey through the Western forest to the scene of the rude diplomatic Congress to be held beneath its primeval shade, Mr. Madison set out from home to explore the busy haunts of civilized man, combining the gratifications of personal friendship with the pursuit of information respecting the condition of the country, which his retired situation rendered the more necessary to him.

In the course of his journey, he made a visit to Mount Vernon, and afterwards to his friends in Congress, then in session at New York. Of this excursion, and of some of its fruits of observation and intelligence, he gives the following interesting summary in a letter to Mr. Jefferson, dated from Philadelphia, the 3d of October, 1785: —

"In pursuance of the plan intimated in my last, I came to this city about three weeks ago, from which I continued my trip to New York. I returned last night, and, in a day or two, shall start for Virginia. Colonel Monroe had left Philadelphia a few days before I reached it, on his way to a treaty to be held with the Indians, about the end of this month, on the Wabash. If a visit to the Eastern States had been his choice, short as the time would have proved, I should have made an effort to attend him. As it is, I must postpone that gratification, with a purpose, however, to embrace it on the first convenient opportunity." . . . . .

"During my stay at New York, I had several conversations with the Virginia Delegates, but with few others, on the affairs of the Confederacy. I

find, with much regret, that these are as yet but little redeemed from the confusion which has so long mortified the friends to our national honor and prosperity. Congress have kept the vessel from sinking; but it has been by standing constantly at the pump, not by stopping the leaks which have endangered her. All their efforts for the latter purpose have been frustrated by the selfishness or perverseness of some part or other of their constituents.

"The desiderata most strongly urged by our past experience and present situation are: 1. A final discrimination between such of the unauthorized expenses of the States as ought to be added to the common debt, and such as ought not; 2. A constitutional apportionment of the common debt, either by a valuation of the lands, or a change of the article which requires it; 3. A recognition by the States of the authority of Congress to enforce payment of their respective quotas; 4. A grant to Congress of an adequate power over trade."

After stating the difficulties encountered with regard to the three first-named objects, and his views of the best mode of surmounting them, he proceeds: —

"The fate of the fourth object is still suspended. The recommendations of Congress on this subject, passed before your departure (resolutions of 30th April, 1784), have been positively complied with by few of the States, I believe; but I do not learn

that they have been rejected by any. A proposition has been agitated in Congress, and will, I am told, be revived, asking from the States a general and permanent authority to regulate trade, with a proviso that it shall in no case be exercised without the assent of eleven States in Congress. The Middle States favor the measure; the Eastern are zealous for it; the Southern are divided.

"Of the Virginia Delegation, the President [Richard Henry Lee] is an inflexible adversary, Grayson unfriendly, and Monroe and Hardy warm on the opposite side. If the proposition should pass Congress, its fate will depend much on the reception it may find in Virginia; and this will depend much on the part which may be taken by a few members of the legislature. The prospect of its being levelled against Great Britain will be most likely to give it popularity.

"In this suspense of a general provision for our commercial interests, the more suffering States are seeking relief from partial efforts, which are less likely to obtain it than to drive their trade into other channels, and to kindle heart-burnings on all sides. Massachusetts made the beginning. Pennsylvania has followed with a catalogue of duties on foreign goods and tonnage, which could scarcely be enforced against the smuggler, if New Jersey, Delaware and Maryland were to co-operate. The avowed object of these duties is to encourage domestic manufactures, and prevent the exportation of coin to pay for foreign. The legislature had

previously repealed the incorporation of its bank, as the cause of the latter and a great many other evils.

"South Carolina, I am told, is deliberating on the distresses of her commerce, and will probably concur in some general plan, with a proviso, no doubt, against any restraint from importing slaves, of which they have received from Africa since the peace about twelve thousand. She is also deliberating on the emission of paper money; and it is expected she will legalize a suspension of judicial proceedings, which has been already effected by popular combinations. The pretext of these measures is the want of specie, occasioned by the unfavorable balance of trade. . . . .

"On my journey I called at Mount Vernon, and had the pleasure of finding the General in perfect health. He had just returned from a trip up the Potomac. He grows more and more sanguine, as he examines further into the practicability of opening its navigation. The subscriptions are completed within a few shares, and the work is already begun at some of the lesser obstructions. It is overlooked by Rumsey, the inventor of the boat which I have, in former letters, mentioned to you. . . . . The General declines the shares voted him by the Assembly, but does not mean to withdraw the money from the object which it is to aid, and will even appropriate the future tolls, I believe, to some useful public establishment, if any such can be devised, that will both please himself and be likely to please the State."

The day fixed for the meeting of the legislature of Virginia was the 17th of October, 1785. A quorum of the House of Delegates did not attend until the 24th of the month. The session commenced inauspiciously in an animated contest for the chair, between Mr. Tyler, the late Speaker, and Colonel Benjamin Harrison, late Governor of the State. The latter prevailed by a majority of six votes.

The body contained a smaller number than usual of old members invested with a traditional influence. Colonel Harrison, Mr. Braxton, and Mr. Meriwether Smith were, perhaps, the oldest members. All three of them had been members of the Continental Congress, as well as often employed in the councils of the State; and the two former had the further prestige of being signers of the Declaration of Independence.

Colonel Harrison was a bold, frank man, and had been zealous and decided in all the early movements of the Revolution. When John Dickinson, in the Congress of 1775, expressed his self-complacency with regard to the second petition to the King, of which he was himself mainly the author, by saying there was but one word in the paper which he disapproved, and that was the word "Congress," it was Colonel Harrison who rose and said, "There is but one word in the paper, Mr. President, which I approve, and that word is Congress."

Mr. Braxton, though he had shown no want of

firmness or zeal in maintaining the rights of America at all times, and was even among the champions of Mr. Henry's resolutions on the Stamp Act, had incurred a temporary loss of popularity by the scheme of government which he recommended to the Virginia Convention, under the signature of "A Native," in 1776.[1] It was in consequence of the bad odor of that scheme, regarded with the more jealousy, perhaps, on account of the former residence of the author for a year or two in England, that he was soon afterwards pretermitted in the delegation to Congress.

Mr. Meriwether Smith was much conversant in affairs, both public and private. His pursuits and connections as a merchant, while they gave him a greater aptitude for the conduct of business, were supposed, on some occasions, to impart a professional bias to his political views. As a Delegate in Congress, he underwent many vicissitudes of favor and disfavor with his constituents; at one time receiving their thanks, at another their censure, and in several instances subjected to charges and investigations which, though terminating in exculpation, implied a certain degree of eccentricity and impracticableness in the character exposed to them.[2]

With these veterans of the House might be classed, in point of ability and position, Mr. John

[1] See ante, vol. I. pp. 134 and 147.

[2] See Journal of House of Delegates, October session, 1779, p. 30. Idem, May session, 1780, pp. 22 and 46. Idem, May session, 1781, p. 14. Idem, October session, 1781, p. 40.

Page, Mr. Tyler the late Speaker, Mr. Ronald, Mr. Carter Henry Harrison, Mr. Alexander White, and Mr. Charles Mynn Thruston, — the last of whom, at the breaking out of the Revolution, had exchanged the clerical gown for the soldier's uniform, and was now an ardent and active civilian. In a junior rank, but giving promise of future distinguished careers, were Mr. James Innes, Mr. Joseph Prentis, Mr. Richard Bland Lee, Mr. Wilson Cary Nicholas, Mr. Francis Corbin, and Colonels Henry Lee and Edward Carrington, whose brilliant services in the army proved a passport to a new and not less expanded theatre of usefulness in political life. Colonel John Francis Mercer also, upon the expiration of his term of service in Congress, was now again a member of the legislature of the State.

In the organization of the standing committees, Mr. Madison was again assigned to the chairmanship of the committee for courts of justice, — a position appropriate to the leading part he was to take in the general revision of the laws of the State. But an occasion was soon presented for entering upon another subject, which he felt to be vitally connected, not only with the welfare of the State, but with the prosperity and harmony, and even existence, of the Confederacy.

Petitions came up from Norfolk, Portsmouth, Suffolk, and Alexandria, representing the deplorable condition to which the commerce of the State had been reduced by the policy of the British Gov-

ernment, since the return of peace; and demanding the adoption of countervailing measures at the hands of the legislature, and, in general, such other relief as should seem expedient and effectual. The petition from Norfolk alleged, that "the prohibition laid by Great Britain on the trade to the West Indies, and the almost total monopoly of the other branches of trade by foreigners, has produced great distress and much injury to the trade of the Commonwealth; that the rapid decrease of American bottoms, the total stop to ship-building, and to the nursery of American seamen occasioned thereby, threaten the most alarming consequences, unless timely avoided by the wisdom of the legislature."

The representation from Portsmouth set forth, that "the present deplorable state of trade, occasioned by the restrictions and policy of the British acts of navigation, has caused great and general distress, and threatens total ruin and decay to the several branches of commerce;" and that from Suffolk added, "that even the coasting trade and inland navigation had fallen into the hands of foreigners." The memorial from Alexandria presented a picture of the condition of the country no less gloomy and discouraging."[1]

[1] The following extract of a letter from Mr. Madison to Mr. Richard Henry Lee, dated at Orange, Va., the 7th of July, 1785, presents other features in the situation of Virginia, at that time, as affected by the British monopoly of her trade, which well deserve to be borne in mind:—

"What makes the British monopoly the more mortifying is the abuse which they make of it. Not only the private planters, who have resumed the practice of shipping

These petitions, as they were received, were referred to the committee of the whole House on the state of the Commonwealth; and, on the 7th of November, the House resolved itself into a committee of the whole to take them into consideration. A general and animated discussion arose as to the nature and extent of the remedy to be applied. Mr. Madison at once took the ground that there could be no effectual remedy for the evils complained of but through a uniform system of commercial regulations, pervading all the States, to be enacted by a common authority; and that, for that purpose, the articles of confederation should be so amended as to invest Congress with the power of regulating commerce with foreign nations. A fragment found among his papers enables us to give the outline of his argument.

He contended, that, whether the object in view

their own tobacco, but many of the merchants, — particularly the natives of the country, who have no connections with Great Britain, — have received accounts of sales this season, which carry the most visible and shameful frauds in every article. In every point of view, indeed, the trade of the country is in a most deplorable condition.

"A comparison of current prices here with those in the Northern States, either at this time or at any time since the peace, will show that the loss direct on our produce, and indirect on our imports, is not less than fifty per cent. Till very lately, the price of our staple has been down at 32*s.* and 33*s.* on James River; at 28*s.* on Rappahannock tobacco. During the same period, the former was selling in Philadelphia, and I suppose in other Northern ports, at 44*s.* of this currency, and the latter in proportion, though it cannot be denied that tobacco in the Northern ports is intrinsically worth less than it is here, — being at the same distance from the ultimate market, and burthened with the freight from this to the other States. The price of merchandise here is, at least, as much above, as that of tobacco is below, the Northern standard."

be to countervail the restrictions of foreign governments, to build up an independent navigation of our own, to encourage domestic industry, or to derive a revenue from commerce, it was alike necessary that the measures pursued should emanate from the government of the Confederacy, and be obligatory on all the States, — that duties, or commercial regulations, prescribed by the separate authority of one State, would be eluded or defeated in their operation by a different system adopted in a conterminous State, — that if Virginia, for example, in defence of her interests, should subject the existing course of British trade to burthens or restrictions, instead of obtaining thereby a redress of the inequality complained of in the commercial code of England, or securing to her own enterprise the advantages hoped for, the only effect would be to turn that trade to the ports of Maryland or North Carolina, from which the prohibited or discouraged articles would find their way, by licit or illicit means, into her own borders, — that this had been already experienced in the relations between Massachusetts and Connecticut, New York and New Jersey, Pennsylvania and Delaware, — that States, having no convenient ports of their own, would feel themselves oppressed and aggrieved by tributes levied from their consumption by States more fortunately situated, when no share of the benefit accrued to them in a revenue flowing into a common treasury and applicable to the common charge, — that heart-burnings and contentions would ensue,

and had already arisen, fatal to the harmony and destructive of the efficiency of the Confederacy, — that the same controlling considerations which, in the original plan of the Confederation, had caused the powers of peace and war, and of foreign negotiations, to be vested in Congress, required the regulation of commerce with foreign nations also to be lodged in its hands, — that, without this additional power, that of concluding treaties of commerce, which was expressly granted to Congress, must remain nugatory and ineffectual, — that it was idle to denounce danger to the liberties of the States from the delegation of such a power to Congress, when it already possessed powers of a far more imperial character, — that, in all the Confederacies of ancient or modern times, the general superintendence of commerce had been intrusted to the central authority, — that it was now essential to the interests of all the States, and indeed to the preservation of the Confederacy itself, that this power should be granted to Congress, — that, for the want of it, discontents and mutual alienation and discord were rapidly spreading among the States; and, unless an effectual remedy were applied, the catastrophe, which the policy of their late enemy was so constantly exerted to bring about, must soon occur. He concluded by depicting the consequences of a dissolution of the Confederacy, in an habitual appeal to the sword in every petty squabble among the States; in the rapid growth of standing armies; in the crushing weight of inordinate and perpetual

taxes; in a degrading dependence of the severed States on the protection of foreign powers, of whose interested designs they would become the sport; and, finally, in the ruin of all those cheering hopes for human freedom inspired by the American revolution, whose glory would be for ever blasted by so discreditable and disastrous an issue to its toils and sacrifices.[1]

[1] We subjoin here Mr. Madison's notes for his speech on this occasion, as we find them among his papers: —

"I. — *General Regulations* necessary, whether the object be —
1. To counteract foreign plans.
2. To encourage ships and seamen.
3. To encourage manufactures.
4. Revenue.
5. Frugality — articles of luxury most easily run from State to State.
6. Embargoes — case of Delaware in late war.

II. — Necessary to prevent contentions among the States.
1. Case of French provinces — Neckar says 2,300 patrols are employed against internal contraband.
2. Case of Massachusetts and Connecticut.
3. Case of New York and New Jersey.
4. Pennsylvania and Maryland.
5. Virginia and Maryland.
6. Irish propositions.

III. — Necessary to justice and true policy.
1. Connecticut and New Hampshire.
2. New Jersey.
3. North Carolina.
4. Western country.

IV. — Necessary as a system convenient and intelligible to foreigners trading to the United States.

V. — Necessary as within reason of Federal constitution, the regulation of trade being as impracticable by the States as peace, war, ambassadors, &c.
Treaties of commerce ineffectual without it.

VI. — Safe with regard to the liberties of the States.
1. Congress may be trusted with trade as well as war, &c.
2. Power of treaties involve the danger, if any.
3. Control of States over Congress.
4. Example of Amphictyonic League, Achæan, &c., Switzerland, Holland, Germany.
5. Peculiar situation of United States increases the repellant power of the States.

VII. — Essential to preserve Federal constitution.
1. Declension of Federal government.
2. Inadequacy to end must lead States to substitute other policy, no institution remaining long when it ceases to be useful, &c.
3. Policy of Great Britain to weaken Union.

VIII. — Consequences of dissolution of Confederacy.
1. Appeal to sword in every petty squabble.
2. Standing armies.
3. Perpetual taxes.
4. Sport of foreign politics
5. Blast glory of Revolution."

The result of the discussion was the adoption, by a large majority, of a resolution declaring that "an act ought to pass to authorize the delegates of this State in Congress to give the assent of the State to a general regulation of the commerce of the United States, under certain qualifications." Mr. Madison gives the following interesting account of the proceedings, which took place in committee of the whole, in a letter addressed to General Washington, on the 11th of November, 1785: —

"The merchants of several of our towns have made representations on the distress of our commerce, which have raised the question whether relief shall be attempted by a reference to Congress or by measures within our own competency. On a pretty full discussion, it was determined by a large majority, that the power over trade ought to be vested in Congress, under certain qualifications. If the qualifications suggested, and no others, should be annexed, I think they will not be subversive of the principle, though they will, no doubt, lessen its utility. The Speaker [Colonel Benjamin Harrison], Mr. Meriwether Smith, and Mr. Braxton, are the champions against Congress. Mr. Thruston and Mr. White have since come in, and I fancy I may set down both as auxiliaries.

"They are not a little puzzled, however, by the difficulty of substituting any practicable regulations within ourselves. Mr. Braxton proposed two that did not much aid his side of the question. The first was, that all British vessels from the West

Indies should be excluded from our ports; the second, that no merchant should carry on trade here until he should have been a resident —— years. Unless some plan, free from objection, can be devised for this State, its patrons will be reduced clearly to the dilemma of acceding to a general one, or leaving our trade under all its present embarrassments. There was some little skirmishing on the ground of public faith, which leads me to hope that its friends have less to fear than was surmised."

After the adoption of the above-mentioned resolution by the House, a special committee, consisting of Messrs. Prentis, Tyler, Madison, Henry Lee, Meriwether Smith, Braxton, Ronald, Innes, and Bullitt, was appointed to "draught and report instructions to the Delegates of this State in Congress, pursuant thereto." This committee reported, a few days after its appointment, the required instructions, in the form of a preamble and resolutions. The preamble, which briefly embodied the reasoning of Mr. Madison's speech, and was, doubtless, drawn by him, was conceived in the following terms: —

"Whereas the relative situation of the United States has been found, on trial, to require uniformity in their commercial regulations as the only effectual policy for obtaining, in the ports of foreign nations, a stipulation of privileges reciprocal to those enjoyed by the subjects of such nations in the ports of the United States; for preventing animosities, which cannot fail to arise among the several States from the interference of partial and

separate regulations; and for deriving from commerce such aids to the public revenue as it ought to contribute: — and whereas such uniformity can be best concerted and carried into effect by the Federal councils, which, having been instituted for the purpose of managing the interests of the States in cases which cannot be so well provided for by measures individually pursued, ought to be invested with authority in this case, as being within the reason and policy of their institution." And to this was subjoined a resolution, that the Delegates of the State be, therefore, instructed to propose in Congress a recommendation to the States to authorize that body to regulate their trade with foreign nations and with each other on certain principles and under certain qualifications thereto annexed.

The principles and qualifications then enumerated fell short, in several respects, of the scope of the preamble, as well as of the known views of Mr. Madison. They were as follows: 1. That Congress should be empowered to prohibit the entrance into the ports of the United States of the vessels of any nation having no commercial treaty with the United States, or to impose duties on such vessels and their cargoes,[1] which prohibitions and duties should be uniform throughout the United States, and the proceeds of the latter be carried into the treasury of the State within which they

[1] This limitation of the proposed regulation to the vessels and cargoes of nations having no commercial treaty with the United States, was stricken out in a subsequent stage of the proceedings.

shall accrue; 2. That, besides the above-mentioned duties, Congress should levy the five per cent impost, to which Virginia had already given her assent for the benefit of the Federal treasury: 3. That no State should be at liberty to impose duties on any merchandise imported from another State, but might altogether prohibit the introduction from another State of any articles, the importation of which was, at the same time, prohibited from all other places whatsoever; 4. That no commercial regulation, above authorized to be made by Congress, should be entered into by less than two-thirds of the States in that body, nor be continued in force longer than —— years, unless so continued by the same proportion of votes within one year preceding the expiration of the said period, or be revived, in like manner, after its expiration.[1]

This report was referred to a committee of the whole House, where it underwent a vehement and protracted discussion for several days. It was first assailed on its general merits by the adversaries of Federal authority; but, foiled on that ground, their efforts were then directed to reduce the duration of the proposed power to the shortest possible term. Here, profiting of the jealous instincts of State sovereignty, strengthened, more or less in the present instance, by sectional prejudices, they prevailed so far as to limit the grant to thirteen years. This limitation wholly destroyed the practical value of

[1] See Journal of House of Delegates, 1785–6, p. 36.

the concession in the eyes of its friends. The history of this stage of the contest is given in a letter of Mr. Madison to Mr. Jefferson, written immediately after the adjournment of the legislature: —

"In the committee of the whole," he says, "the proposition was combated at first on its general merits. That ground, however, was soon changed for that of its perpetual duration, which was reduced, first to twenty-five, then to thirteen years. Its adversaries were the Speaker, Thruston and Corbin: they were bitter and illiberal against Congress and the Northern States beyond example. Thruston considered it as problematical whether it would not be better to encourage the British than the Eastern marine. Braxton and Smith were in the same sentiments, but absent at this crisis of the question. The limitation of the plan to thirteen years so far destroyed its value in the judgment of its friends that they chose to do nothing rather than adopt it in that form."

It was on the 30th November, 1785, that the House determined to fill the blank left in the report of the committee for the duration of the commercial regulations of Congress, with the term of thirteen years. At the same time, they rejected the proviso which admitted a longer continuance of those regulations by a renewed vote of two-thirds of the States in Congress, within one year preceding the expiration of the limited term. Although it was agreed, on the following day, to reconsider the rejection of this proviso, and it seemed probable

that a majority of the House might be induced to accept the modification it contained, yet the restriction of the grant, in the first instance, to so brief and illusory a period as thirteen years, rendered the proposition, thus mutilated, no longer worth a struggle. It was determined, therefore, by those who had been chiefly concerned in bringing it forward, to let it lie on the table, and to essay some other method of accomplishing their object.

Commissioners, as we have seen, had been appointed by the State of Virginia to meet and confer with commissioners chosen by the State of Maryland, for the purpose of regulating the jurisdiction of the two States over the waters of Potomac River and Chesapeake Bay. This joint commission had been instituted on the motion of Mr. Madison, and he was one of the commissioners appointed on behalf of Virginia to co-operate in the execution of the trust.[1] The commissioners met at Mount Vernon on the 28th of March, 1785, and settled the terms of a compact, which they agreed to recommend to their respective States, for the adjustment of the various matters connected with the exercise of their jurisdiction over the Bay and River.

While deliberating on this, the special object of their meeting, the enlightened men[2] who composed the joint commission could not fail to perceive that

[1] See ante, vol. I. pp. 548–552.

[2] The commissioners, who attended the meeting and united in its proceedings, were George Mason and Alexander Henderson on the part of Virginia; and Daniel of St. Thomas Jenifer, Thomas Stone, and Samuel Chase, on the part of Maryland.

there were other matters of common interest upon which it was of great moment to the mutual harmony and prosperity of the two States that they should act in concert. Among these, it was deemed of paramount importance that they should adopt a uniform system of duties on imports and exports and uniform regulations in questions both of commerce and currency. The commissioners, therefore, agreed, though these objects were not comprehended strictly within the scope of their authority, to recommend, in a supplemental report, the adoption of a uniform legislation in relation to them by both States; and, with a view to the adjustment of a uniform system of duties and commercial regulations particularly, to propose that commissioners be annually appointed by the two States to confer and report upon the details of such a system to be mutually enacted by the authority of each.

These recommendations were made, in corresponding terms, by the joint commissioners, to their respective legislatures. They were first acted upon by the legislature of Maryland; and that body, in giving its assent to the recommendation respecting uniform duties, proposed that the legislatures of Delaware and Pennsylvania should be also invited to send commissioners to meet those of Virginia and Maryland, and to unite in the same system of commercial policy.[1] Neither the proceedings of

[1] See Journal of House of Delegates of Maryland, under date of 22d of November, 1785; and of the Senate of Maryland, under date of 23d and 24th of November, 1785.

the joint commissioners, nor the action of the legislature of Maryland upon them, had yet been laid before the legislature of Virginia. But Mr. Madison, being one of the commissioners and in frequent communication with his colleagues, though he had not been able to be personally present at their meeting, was well informed both of their proceedings and of the resolutions which the legislature of Maryland had adopted with regard to them.

Thus possessed of what had been done, and foreseeing the particular shape in which the consideration of the commercial relations of Virginia with the neighboring States would soon be brought before the General Assembly by a formal communication of the proceedings of the joint commission and of the legislature of Maryland, he determined to profit of so fortunate a concurrence of circumstances, by taking a new line of action coincident with it. It occurred to him at once, that no expedient would be so likely to baffle the arts of the opposition, and, at the same time, to promote the great object he had in view, as to enlarge the recommendations, which would come before them with so much weight of authority, into a convention of commissioners from *all* the States, to inquire into the disorders of their trade, and to suggest such measures of a general character as would furnish an appropriate and effectual remedy for the commercial distresses of the country.

As soon, therefore, as the mutilation of the pro-

position, originally moved, rendered it no longer worthy of pursuit, he prepared a resolution, as a substitute for it, which proposed the appointment of commissioners on the part of Virginia, to meet such commissioners as should be appointed by the other States, at a time and place to be agreed on, "in order to take into consideration the trade of the United States; to examine the relative situation and trade of the said States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and permanent harmony; and to report to the several States such an act, relative to this great object, as, when unanimously ratified by them, will enable the United States in Congress effectually to provide for the same."

Knowing that this resolution would be regarded with more of jealousy if presented by himself, as his long association with the labors of Congress exposed him to the imputation of an undue bias in favor of the extension of its powers, he had recourse to the friendly offices of Mr. Tyler, — a popular colleague, who agreed with him in sentiment on the present occasion, and had never served in the Federal councils, — to offer it to the House.[1] It was offered, as a substitute for the original proposition, immediately after the vote of the House already mentioned, which destroyed the value of the latter by limiting its duration to thir-

[1] See Madison Debates, vol. II. pp. 695, 696; also Tucker's History of the United States, vol. I. p. 343.

teen years; but no definitive decision was asked, at the moment, either on the substitute or the original proposition. They were both suffered to lie on the table for the present, awaiting the farther progress of legislative developments. But Mr. Madison was fully resolved to enter into no enervating compromise with regard to the original proposition; and, from this period, his hopes and his efforts were staked on the success of the substitute.

His views on the subject, marked with characteristic wisdom and sagacity, were expressed in a letter to General Washington, of the 9th of December, 1785:—

"Your letter of November the 30th," he wrote, "was received a few days ago. This would have followed much earlier the one which yours acknowledges, had I not wished it to contain some final information relative to the commercial propositions. The discussion of them has consumed much time; and, though the absolute necessity of some such general system prevailed over all the efforts of its adversaries in the first instance, the stratagem of limiting its duration to a short term has ultimately disappointed our hopes. I think it better to trust to farther experience, and even distress, for an adequate remedy, than to try a temporary measure which may stand in the way of a permanent one, and confirm that transatlantic policy which is founded on our supposed distrust of Congress and of one another.

"Those whose opposition in this case did not

spring from illiberal animosities towards the Northern States, seem to have been frightened, on one side, at the idea of a perpetual and irrevocable grant of power; and, on the other, flattered with the hope that a temporary grant might be renewed from time to time, if its utility should be confirmed by the experiment. But we have already granted perpetual and irrevocable powers of a more extensive nature than those now proposed, and for reasons not stronger than the reasons which urge the latter. And, as to the hope of renewal, it is the most visionary one that perhaps ever deluded men of sense.

"Nothing but the peculiarity of our circumstances could ever have produced those sacrifices of sovereignty, on which the Federal government now rests. If they had been temporary, and the expiration of the term required a revival at this crisis, pressing as the crisis is, and recent as is our experience of the value of the Confederacy, sure I am that it would be impossible to revive it. What room have we, then, to hope that the expiration of temporary grants of commercial powers would always find a unanimous disposition in the States to follow their own example?

"It ought to be remembered too, that, besides the caprice, jealousy, and diversity of opinions which will be certain obstacles in our way, the policy of foreign nations may hereafter imitate that of the Macedonian Prince who effected his purposes against the Grecian Confederacy by gaining over a few of the leading men in the smaller members of

it. Add to the whole, that the difficulty now found in obtaining a unanimous concurrence of the States in any measure whatever, must continually increase with every increase of their numbers, and perhaps in a greater ratio, as the ultramontane States may either have, or suppose they have, a less similitude of interests to the Atlantic States than these have to one another.

"The propositions, however, have not yet received the final vote of the House, — having lain on the table for some time as a report from a committee of the whole. The question was suspended in order to consider a proposition which had for its object a meeting of politico-commercial commissioners from all the States, for the purpose of digesting and reporting the requisite augmentation of the powers of Congress over trade.

"What the event will be cannot be foreseen. The friends of the original propositions are, I am told, rather increasing; but I despair of a majority, in any event, for a longer term than twenty-five years for their duration. The other scheme will have fewer enemies, and may perhaps be carried. It seems naturally to grow out of the proposed appointment of commissioners for Virginia and Maryland, concerted at Mount Vernon, for keeping up harmony in the commercial regulations of the two States. Maryland has ratified the report; but has invited into the plan Delaware and Pennsylvania, who will naturally pay the same compliment to their neighbors."

The resolutions of the legislature of Maryland were laid before the House of Delegates of Virginia on the 5th of December, 1785, and were referred to the committee of commerce, of which Mr. Braxton was chairman. The proceedings of the joint commissioners were communicated to the Governor in a letter from Colonel George Mason, dated the 8th of December, and laid before the House of Delegates the 13th day of the month. These were also referred to the committee on commerce. On the 13th of January, 1786, that committee reported a series of resolutions corresponding with those which had been adopted by the legislature of Maryland, and all founded on the recommendations made by the commissioners in their supplemental report. With regard to the resolution providing for a uniform system of duties and commercial regulations, the committee on commerce proposed that a copy of it be communicated to the legislatures of *all* the States, and that all of them be requested to appoint commissioners to meet and confer with those of Maryland and Virginia, for the purposes expressed in the resolution. In this form all the resolutions of the legislature of Maryland for carrying into effect the recommendations of the joint commissioners, with the exception of two of subordinate importance, were cordially concurred in by the General Assembly of Virginia.[1]

The expediency of a meeting and conference of commissioners from all the States, though for a

[1] See Journal of House of Delegates of Virginia, 1785–6, p. 140.

more restricted object than that contemplated in the resolution prepared by Mr. Madison and still lying on the table of the House, having thus received the sanction of the Assembly, and all the propositions for separate State action, which had been brought forward in the course of the session, having been successively abandoned, except an act to impose a small additional tonnage duty on British vessels, the silent logic of events, on which he wisely counted, seemed to have gradually paved the way for the adoption of his plan of a politico-commercial convention of the States, with a view to a fundamental reform in the constitution of the Confederacy itself. On the last day of the session, the 21st of January, 1786, his resolution was called up, and passed both branches of the legislature, with an opposition much diminished in numbers, if not in violence. Mr. Madison gives the following account of its passage and of the appointment of commissioners under it, in a letter addressed to Mr. Monroe, the day after the adjournment of the legislature: —

"It went through by a very large majority, being opposed only by Mr. Smith and Mr. Corbin. The expedient is, no doubt, liable to objections, and will probably miscarry. I think, however, it is better than nothing; and, as a recommendation of additional powers to Congress is within the purview of the commission, it may possibly lead to better consequences than at first occur. The commissioners first named were the Attorney [Edmund Randolph], Dr. Walter Jones of the Senate, and myself. The

importunity of Mr. Page procured the addition of St. George Tucker, who is sensible, Federal, and skilled in commerce; to whom was added, on the motion of I know not whom, Meriwether Smith, who is, at least, exceptionable in the second quality, — having made unceasing war, during the session, against the idea of bracing the Federal system. In the Senate, a further addition was made of Colonel Mason, Mr. David Ross, and Mr. Ronald. The name of the latter was struck out at his request. The others stand. It is not unlikely that this multitude of counsellors will stifle the thing in its birth. By some it was probably meant to do so."

Thus was inaugurated the movement which led, step by step, in direct and uninterrupted progression, to the grand consummation of a new and efficient constitution of government for the United States of America. A proposition for a general convention of the States had been made before, — first by the legislature of New York, in July, 1782, and again by Massachusetts, as we have seen, in July, 1785; but neither was followed by any result, because neither sufficiently consulted existing circumstances or the state of public opinion. The former was prompted by the impatience of Colonel Hamilton, at a most inopportune period, — in the midst of war, — and carried on its face so radical a spirit of hostility to the established system of the Confederation, as to startle and repel the more sober friends of practicable reform. It fell still-born, and lay unnoticed and neglected. The proposition of

Massachusetts, though growing immediately out of the commercial distresses of the country, called for a convention of general and undefined powers, which so alarmed the jealousies even of her own delegates in Congress, that they took the responsibility of declining to lay it before that body,[1] and, their refusal being acquiesced in by their constituents, it, too, expired by default.

Mr. Madison's proposition was conceived in a spirit of practical statesmanship. The remedy he proposed did not go, in the first instance, beyond the evil that was *felt;* and, in skilfully adapting the form of that remedy to the actual conjuncture, he secured for it a degree of acceptance that rendered it fruitful of practical results. Attempts are sometimes made to derogate from the leading agency of Virginia in the successive measures which terminated in the formation and adoption of the new constitution, by pointing to the prior date of the propositions, in other quarters, for a general convention. But of what significance is this? There was no special merit in the mere suggestion of a convention of the States for the reform of the articles of confederation; for that was an idea familiar to the minds of politicians, as well as speculative writers, previous to the proposition either of New York or Massachusetts. The question of real historic interest is, not who first threw out suggestions, obvious in themselves, which, from want of fitness,

[1] See letter of Elbridge Gerry, Samuel Holten, and Rufus King, to Governor Bowdoin.

intrinsic or extrinsic, remained barren and inoperative; but who put in motion, and perseveringly followed up to their consummation, a series of practical and efficient measures, which, by a judicious adaptation to circumstances, actually produced the great result that was sought for.

Although the correction of the evils so widely felt, arising from the disordered condition of the commerce of the country, was the object which Mr. Madison held up primarily to view, he was well aware that it was an object which could be adequately provided for only by most important changes in the whole structure of the government. The commercial evils of the country, too, had so affected every part of the social economy, that they drew after them both political and moral disorders; and a well-conceived remedy applied to the former would go far to redress every grievance of the republic. "Most of our political evils," said Mr. Madison, in a letter of this period to Mr. Jefferson, "may be traced up to our commercial ones, as most of our moral may to our political."[1]

He was not without apprehensions, as we have seen, that the convention which he had proposed would miscarry, in the first instance, as to its immediate object; nor was he insensible of the invidious criticisms which might be made upon it, as a movement originated by the States, and to be conducted by them, independently of the sanction and concurrence of Congress. But, through all these difficul-

[1] Letter of 18th March, 1786.

ties, he felt a sustaining confidence that it would lead on to good; that if, from the want of due co-operation on the part of other States, or from any other cause, it should fail to accomplish at once the full extent of its mission, that very failure would be the occasion of organizing another and more efficient convention; and that the *end* would be a thorough reform and re-invigoration of the Federal system, — a reform, like the great innovations of time,[1] accomplished by a process gradual and cautious, but for that reason the more lasting and salutary. We shall see, from his correspondence, that in these views he never wavered, bating those moments of occasional discouragement which his very solicitude for the object begat; and that, in the vista which opened before him, the convention of Annapolis was but the half-way station to that of Philadelphia, in which the great work of constitutional reform received the final crown of success.

[1] It was Lord Bacon who commended the innovations of time, — the greatest, he said, of all innovators, — as examples specially worthy of imitation: *Quis novator tempus imitatur, quod novationes ita insinuat ut sensus fallant.*

CHAPTER XXIII.

Mr. Madison makes another Effort for Compliance with Treaty of Peace respecting British Debts — His Proposition, relative to Erection of District of Kentucky into an Independent State, adopted — His Labors in prosecuting Revision of the Laws — Unhappy Financial Measures of the Legislature — It adjourns — Occupations and Studies of Mr. Madison during Recess — Taste for Natural History promoted in Virginia by Officers of the French Army, while its Head-Quarters were at Williamsburg, after Surrender of Yorktown — Researches of Mr. Madison in that Department of Science — Correspondence with Mr. Jefferson, in which he examines and animadverts on Theories of Buffon — General Philosophical Speculations — Habit of Cautious and Comprehensive Induction exemplified in Answer to Letter of Mr. Jefferson, on Relative Condition of Laboring Poor in Europe and America.

The British Government, as we have seen, made the failure of some of the States to comply with the treaty of peace, in regard to the recovery of debts due from the citizens of one country to those of the other, its excuse for delaying the surrender of the military posts held by it within the limits of the United States. Mr. Madison, anxious to remove every reproach of a breach of public faith from the character of Virginia, determined to make another experiment to prevail on the legislature to repeal the laws, passed during the war, by which an interdict had been laid on the payment of these debts. He moved the appointment of a special committee

on the subject, of which he was made chairman, and presented from that committee a proposition, corresponding in substance with the one offered by him at a former session, and aiming, by a fair and liberal arrangement, to conciliate the obligations and interests of the debtor with the rights of the creditor.[1] This proposition, in its passage through the committee of the whole, to which it was referred, underwent radical changes of a nature so inconsistent with a loyal fulfilment of the obligations it recognized in terms, that Mr. Madison abandoned it, in despair of any honorable result.

"Since the proceedings of the committee of the whole," he said, in a letter to Mr. Monroe, "the subject has slept on the table, no one having called for the report. Being convinced myself that nothing can be now done that will not extremely dishonor us and embarrass Congress, my wish is that the report may not be called for at all. In the course of the debates, no pains were spared to disparage the treaty by insinuations against Congress, the Eastern States, and the negotiators of the treaty, particularly John Adams. These insinuations and artifices explain, perhaps, one of the motives from which the augmentation of the Federal powers and respectability has been opposed."

During this session of the legislature, a proceeding of a novel and interesting character took place, which called for all the wisdom and foresight of Mr. Madison to mould it into a proper shape. The

[1] See ante, vol. I. pp. 566–570, and 595–599.

inhabitants of the district of Kentucky, embraced within the limits and represented in the councils of Virginia, met in convention in May, 1785, and adopted a memorial appealing to the legislature to sanction their erection into an independent State. The Commonwealth of Virginia, recognizing the fundamental principle that the true end of representative government is the welfare and convenience of the governed, felt no repugnance to the proposed measure;[1] but, before renouncing her sovereignty over so large a portion of her population and territory, both justice and policy prescribed, as an essential preliminary, that the new State should come under the obligations and allegiance due to the common Confederacy. This sentiment had been forcibly expressed by Mr. Madison, in a letter to Richard Henry Lee, written the 7th July, 1785, a few months before the meeting of the Assembly.

"I agree perfectly with you," he says, "in thinking it the interest of the country to embrace the first decent opportunity of parting with Kentucky,

[1] The conduct of Virginia, in consenting to the separation of Kentucky, when a longer incorporation with the parent State ceased to be desired, was the subject of a warm contemporary eulogium from one of the ablest political writers of the last century. Judge Wilson, of the Supreme Court of the United States, in speaking of it before his Law Class in the College of Philadelphia, in 1790–91, used the following language: "An illustration of this doctrine may be drawn from a recent instance which has happened in the Commonwealth of Virginia. The district of Kentucky has, by an amicable arrangement, been disjoined from the rest of the Commonwealth, and formed into a separate State. It is a pleasure, perhaps I may add it is a laudable pride, to be able to furnish to the world the first example of carrying into practice the most sublime parts of the most sublime theories of government and law." — Wilson's Works, vol. i. p. 159.

and to refuse with firmness to part with any more of our settlements beyond the Alleghany. It seems necessary, however, that this first instance of a voluntary dismemberment of a State should be conducted in such a manner as to form a salutary precedent.

"As it is an event that will indirectly affect the whole Confederacy, Congress ought clearly to be made a party to it, either immediately or by a proviso that the partition act shall not take effect till the actual admission of the new State into the Confederacy. No interval whatever should be suffered between the release of our hold on that country, and its taking on itself the obligations of a member of the Federal body. Should it be made a separate State without this precaution, it might possibly be tempted to remain so, as well with regard to the United States as to Virginia."

The memorial of the convention of Kentucky was, soon after its presentation, referred to a select committee, consisting of Mr. Madison, Mr. Henry Lee, Mr. Bullitt, Mr. Ronald, Mr. Carrington, Mr. Alexander White, Mr. Corbin, Mr. Page, Mr. Meriwether Smith, and Mr. Prentis.[1] A report was made from the committee, through Mr. Page, which prescribed no other conditions for the independence of the new State than that it should recognize all rights of property derived under the laws of Virginia, and be answerable for a fair proportion of her public debt. It would hence appear

[1] See Journal of House of Delegates of Virginia, 1785, p. 36.

that Mr. Madison had not been able to obtain the sanction of the select committee to the full extent of his views. He moved, therefore, in committee of the whole House, an amendment, embracing, with other additional provisions, an express declaration that the authority of Virginia over the district was not to cease until measures were definitively taken for the incorporation of the new State into the Confederacy; and also that the river Ohio, along the borders of the new State, should be for ever a common highway, free to all the citizens of the United States. Of the success of this amendment, he gives the following account, in a letter to Mr. Monroe, of the 9th December, 1785: —

"My proposed amendment to the report on the memorial of Kentucky was agreed to in a committee of the whole, without alteration, and with very few dissentients. It lies on the table for the ratification of the House. The members from that district have become extremely cold on the subject of an immediate separation."

The action of the committee of the whole on the amendment was, a few days afterwards, confirmed by the House; and a bill, in pursuance of it, was ordered to be prepared and brought in by the committee for courts of justice, of which Mr. Madison was chairman. The bill so prepared became a law, and, subsequently renewed from time to time, formed the basis on which Kentucky, seven years later, was received into the Union, under the auspices of the new Constitution of the United

States. The far-sighted wisdom of Mr. Madison was rarely, if ever, more strikingly or more happily manifested than in this instance; for, the intrigues of foreign powers concurring with the local discontents that soon arose, there was more than one occasion, during the interval which elapsed before the final admission of the new State into the Union, when, if she had been already invested with the attributes of a separate political existence, she would, in all probability, have been lost — for a time at least — to the sisterhood of united American States.[1]

The task of severest and most protracted toil that devolved upon Mr. Madison, during this session of the legislature, remains to be mentioned. Of the one hundred and twenty-six bills, which composed the revised code that had been so elaborately digested by the able jurisconsults appointed for the purpose at an early period after the establishment of independent government in Virginia, but few had yet been acted upon by the legislature. They were now referred *en masse* to the committee for courts of justice, which was instructed to examine and report for the action of the House such bills as were not of a temporary nature. Mr. Madison, as the chairman, reported in a few days

[1] The intrigues of Don Gardoqui, the Spanish Minister, and of Lord Dorchester, the British Governor-general of Canada, with the encouragement they received from the ambitious or interested views of certain individuals in the West, are minutely detailed in the History of Kentucky, by Humphrey Marshall, vol. I. pp. 336–353, and 388–90. — See also Marshall's Life of Washington, vol. II. p. 152.

one hundred and seventeen bills of the character indicated in the instruction. They were then committed to a committee of the whole House; and, upon his motion, an order was made that three days of every week, during the session, should be set apart for their consideration, in exclusion of other business.

For five or six weeks, this prescribed routine was gone through, with the perseverance, and not a little of the monotony, which belong to the operations of the tread-mill. The bills were considered, paragraph by paragraph: some of them were vehemently opposed, both in their principles and details, by veterans of the bar, constitutionally averse to every departure from the file of precedents; and upon Mr. Madison devolved, almost exclusively, the burthen of explanation or defence. Among his papers, we find, in notes and references to legal authorities, abundant traces of the great amount of labor which the performance of this duty cost him. The House, at length, grew weary, and he well nigh exhausted; but not until near half of the bills reported by him had been passed into laws, leaving the residue to be acted upon by the succeeding legislature.

To Mr. Jefferson, one of the revisers, and deeply interested in the fate of the work, he rendered, immediately after the adjournment of the legislature, the following account of the progress which had been made in it: —

"The revised code was brought forward pretty

early in the session. It was first referred to the committee of courts of justice, to report such of the bills as were not of a temporary nature, and, on their report, committed to a committee of the whole House. Some difficulties were raised as to the proper mode of proceeding, and some opposition made to the work itself. These, however, being surmounted, and three days in each week appropriated to the task, we went on slowly, but successfully, till we arrived at the bill concerning crimes and punishments. Here the adversaries of the code exerted their whole force, which, being abetted by the impatience of its friends in an advanced stage of the session, so far prevailed that the farther prosecution of the work was postponed to the next session.

"The operation of the bills passed is suspended until the beginning of 1787; so that, if the code should be resumed by the next Assembly and finished early in the session, the whole system may commence at once. I found it more popular in the Assembly than I had formed any idea of; and though it was considered by paragraphs, and carried through all the customary forms, it might have been finished at one session with great ease, if the time spent on motions to put it off, and other dilatory expedients, had been employed on its merits. The adversaries were the Speaker (Tyler), Thruston, and Mercer, who came late in the session into a vacancy left by the death of Colonel Brent, of Stafford, and contributed principally to the mischief."

That portion of the proceedings of the legislature, at its present session, which seems to have left the most painful impression on the mind of Mr. Madison and given him the most serious apprehensions for the future, was its action in regard to the finances of the State. We leave to his own pen the recital of the circumstances which awakened his solicitude: —

"The tax for the current year," he says, in the letter to Mr. Jefferson just cited, "was to have been collected in September last, and had been, in part, actually collected in specie. Notwithstanding this, and the distress of public credit, an effort was made to remit the tax altogether. The party was headed by Braxton, who was courting an appointment into the council. On the question of the third reading, the affirmative was carried by 52 against 42. On the final question, a vigorous effort on the negative side, with a reenforcement of a few new members, threw the bill out.

"The victory, however, was not obtained without subscribing to a postponement instead of remission, and the admission of facilities[1] instead of specie. The postponement, too, extends not only to the tax which was under collection, and which will not now come in till May, but to the tax of September next, which will not now be in

[1] The facilities here referred to were auditors' warrants and loan-certificates for interest due on the public debt, as well of the State as of the United States. — See Hen. Stat., vol. XII. p. 95.

the treasury till the beginning of next year. The wisdom of seven sessions will be unable to repair the mischief of this single act."

In connection with this subject, he speaks, in terms of gloomy augury, of the inclination which was beginning to show itself for paper money: —

"A considerable itch for paper money discovered itself, though no overt attempt was made The partizans of the measure, among whom Mr. Meriwether Smith may be considered as the most zealous, flatter themselves, and, I fear, upon too good ground, that it will be among the measures of the next session. The unfavorable balance of trade and the substitution of facilities in the taxes will have dismissed the little specie remaining among us, and strengthened the common argument for a paper medium."

Amid these indications of a disturbed state of the political elements, ominous of a rapidly increasing complication of the public embarrassments, the legislature, on the 21st of January, 1786, terminated a protracted session of ninety-seven days. Mr. Madison returned, with even more than his usual relish, to the tranquil enjoyments of the country. He had just received from France a large accession to his books, in whose congenial society he passed, for the most part, the periods of vacation from his legislative duties. In writing to Mr. Jefferson, the day after the adjournment of the legislature, he says: —

"A vessel from Havre de Grace brought me, a few days ago, two trunks of books, but without letter or catalogue attending them. I have forwarded them to Orange, without examining into the contents, lest I should miss a conveyance, which is very precarious at this season, and be deprived of the amusement they promise me for the residue of the winter."

We have already mentioned Mr. Madison's predilection for the study of Natural History. The same taste, indeed, was widely diffused in the country, at the time of which we are speaking, and was, doubtless, much promoted by the intimate relations of every kind then subsisting with France, where this branch of science had been converted into a national passion by the captivating graces which the splendid diction and ingenious speculations of Buffon had thrown around it. The rupture with the mother country and the alliance with her rival rendered the science and literature, as well as the arms and politics, of the latter, general favorites in America; and many of the men of education, on this side of the Atlantic, formed a closer and more sympathetic communion with the ruling minds of the continent of Europe than with those of the parent isle. The "Notes on Virginia," written towards the close of the War of the Revolution, shows how strongly this feeling had taken hold of the mind of Mr. Jefferson, and how much he was fascinated by the genius and science of Buffon, even while

controverting and refuting his theories in regard to the New World.[1]

It appears from the files of Mr. Madison's correspondence, that, about the same time, his learned relative, Dr. Madison, the President of William and Mary College, introduced into the curriculum of that institution a course of lectures on Natural History from Buffon, which he designed to prepare for the press as likely to be particularly acceptable to the public taste.[2] The predilection for these studies was quickened in Virginia by a personal intercourse with the officers of the French army, which, after the surrender of Yorktown, established its head-quarters, for nearly a year, in the city of Williamsburg, in immediate contact with the university of the State. We cannot withhold from the reader the following pleasing picture of the literary sympathies of our chivalric ally, and of the graceful homage of arms to science, described in a letter of Dr. Madison to his kinsman, dated the 15th of June, 1782: —

"We had the satisfaction, the other day, of

[1] The exaltation of French genius and philosophy in the "Notes on Virginia," if somewhat highly colored, was yet natural under the circumstances of the case. When the author proceeds and pronounces the doom of England in the memorable words, "The sun of her glory is fast descending to the horizon; her philosophy has crossed the channel; her freedom, the Atlantic; and herself seems passing to that awful dissolution whose issue is not given human foresight to scan," we must seek the explanation of this language also in the circumstances of the time, while candor compels the admission that the prophetic imprecation has been slow, at least, in the process of its fulfilment.

[2] See manuscript letter of Dr. Madison to J. M., of 3d August, 1780.

seeing the greatest respect paid to our university. Dr. Coste, the first physician to the French army, and who is a favorite of General Chastellux, which seems alone enough to give his name universal currency, delivered a Latin oration upon medicine in general, with applications to this country, &c. He met with much applause; and you will, probably, soon see it in print in Philadelphia. He was presented, at the same time, with a degree. All the generals and principal officers attended upon this occasion, which made a very brilliant appearance.

"So you see that science is not altogether neglected amongst us, though it seemed to want the arm of our ally, as much as our oppressed country did, for some time past. Several of the officers, who have a turn for Natural History, have made excursions into the country beyond the mountains. Chastellux has visited and ordered a plan or view of the natural bridge to be taken. D'Abberville has examined and found out the arcana of the opossum, and also that the bones of the mammoth or the incognitum are common in the lower parts of the country."

The manuscripts of Mr. Madison afford striking evidence of the assiduity with which, at this period of his life, he devoted himself to the cultivation of Natural History. Among them is a note-book, containing a minute analysis of the most important portion of Buffon's works, and his own observations and reflections on the brilliant generalizations of the French philosopher. In his correspondence

with Mr. Jefferson, we find frequent traces of the zeal and discriminating accuracy with which he prosecuted these investigations. The following detached extracts of that correspondence will, perhaps, interest the reader as specimens of the versatility of the writer's mind, in passing from politics to science, as well as from their bearing on the two leading hypotheses of the great European naturalist, with regard to animated nature in America.

In a letter to Mr. Jefferson, of the 12th May, 1786, three months after the adjournment of the legislature, he writes: —

"I observe that in your "Notes" you number the fallow and roe deer among the native quadrupeds of America. As Buffon had admitted the fact, it was, whether true or erroneous, a good argument, no doubt, against him. But I am persuaded they are not natives of the new continent. Buffon mentions the *chevreuil* [roe-deer] in particular, as abounding in Louisiana. I have inquired of several credible persons who have traversed the western woods extensively, and quite down to New Orleans, all of whom affirm that no other than our common deer are anywhere seen. Nor can I find any written evidence to the contrary that deserves notice.

"You have, I believe, justly considered our monax as the marmotte of Europe. I have lately had an opportunity of examining a female one with some attention. Its weight, after it had lost a good deal of blood, was five and a half pounds. Its dimen-

sions, shape, teeth, and structure within, as far as I could judge, corresponded in substance with the description of the marmotte given by D'Aubenton. In sundry minute circumstances, a precise correspondence also was observable. . . . . .

"A very material circumstance in the comparison remains yet to be mentioned. The European marmotte is in the class of those which are dormant during the winter. No person here, of whom I have inquired, can decide whether this be a quality of the monax. I infer it is of the dormant class, not only from its similitude to the marmotte in other respects, but from the sensible coldness of the monax I examined, compared with the human body, although the vital heat of quadrupeds is said, in general, to be greater than that of man.

"This inferiority of heat being a characteristic of animals which become torpid from cold, I should consider it as deciding the quality of the monax in this respect, were it not that the subject of my examination, though it remained alive several days in my hands, was so crippled, and apparently dying the whole time, that its actual heat could not fairly be taken for the degree of its natural heat. If it had recovered, I intended to have made a trial with the thermometer. I now propose, if I can, to have one of their habitations discovered during the summer, and to open it on some cold day next winter. This will determine the matter.

"I also compared, a few days ago, one of our moles [male] with the male one described by Buffon.

It weighed two ounces, eleven pennyweight. Its length, from the end of the snout to the root of the tail, was five inches, three lines, English measure. That described in Buffon was not weighed, I believe. Its length was five inches, French measure. The external and internal correspondence seemed to be too exact for distinct species. There was a difference, nevertheless, in two circumstances, one of which is not unworthy of notice, and the other of material consequence in the comparison."

After giving the particulars of these differences. he proceeds: —

"If these circumstances should not be thought to invalidate the identity of species, the mole will stand as an exception to the theory which supposes no animal to be common to the two continents, that cannot bear the cold of the region where they join: since, according to Buffon, this species of mole (*taupe*) is not found 'dans les climats froids où la terre est gelée pendant la plus grande partie de l'année;' and it cannot be suspected of such a journey, during a short summer, as would head the sea which separates the two continents.

"I suspect that several of our quadrupeds, which are not peculiar to the new continent, will be found to be exceptions to this theory, if the mole should not. The marmotte itself is not an animal taken notice of very far to the North; and as it moves slowly, and is deprived of its locomotive powers altogether by cold, cannot be supposed to have travelled the road which leads from the Old to the

New World. It is, perhaps, questionable whether any of the dormant animals, if any such be really common to Europe and America, can have emigrated from one to the other."

In a letter to Mr. Jefferson, written five weeks later, — the 19th of June, 1786, — he returns to his observations and studies in Natural History: —

"I lately sent you some particulars relating to our moles. For the want of something better to fill the remainder of my paper, I will give you the result of my examination, two days ago, of another of our minor quadrupeds, — I mean the weasel. It was a female, and came to my hands dead. Its color corresponded with the description given by D'Aubenton of the belette and rosalet, or hermine, in its summer dress, excepting only that the belly, &c., which in the European animal was white, was in ours of a lightish yellow, save only the part under the lower jaw, which was white for about half an inch back from the under lip. The little brown spots near the corner of the mouth, mentioned by D'Aubenton, were peninsular. The tail was of the color of the back, &c., all but the end, which was black."

After a minute description of the animal, he gives in tabular form a detailed, comparative statement of the respective weights and dimensions of the weasel, the belette, and the hermine; and then, reviewing the characteristic differences of the two latter, concludes his letter with these observations: —

"The result of the comparison seems to be, that, notwithstanding the blackness of the end of the tail,

and whiteness of the feet [of the weasel], which are regarded as characteristics of the hermine, contradistinguishing it from the belette, our weasel cannot be of the former species, and is nothing more than a variety of the latter. This conclusion is the stronger, as the manners of the weasel correspond more nearly with those of the belette than with those of the hermine. And, if this be a just conclusion, it may possibly make another exception to Buffon's position, that no animal is common to the two continents which cannot bear the climate where they join; as it certainly contradicts his assertion, that, of the animals common to the two continents, those of the new are, in every instance [*sans aucune exception*] smaller than those of the old. But he seems to have given up this point himself. See Supplément, tome VIII. page 329, where he says, 'L'imperfection, qu'il [M. P. l'auteur des Recherches sur les Américains] reproche gratuitement à l'Amérique en général, ne doit porter que sur les animaux de la partie méridionale.'"

One of the consequences of Mr. Madison's predilection for the study of nature, and of his familiarity with the writings of Buffon, was to develop, more and more, the philosophical cast his mind had acquired from his early metaphysical studies.[1] The

[1] The admirable precision and *recherché* elegance of Mr. Madison's style may also, without violence of conjecture, be ascribed, in no small degree, to his familiarity with this great foreign writer, — at once the purest model and the best teacher of the art of composition in his language. Nothing can surpass, whether as precept or example, the discourse on style, delivered by Buffon on the occasion of his reception as a member of the Académie Française.

genius of the great French writer delighted to ascend, by degrees, from an attentive inspection of nature, in her minute and detached operations, to those broad and expanded views of her economy, which, guided by the lights of comparison and induction, lead to the discovery of her general laws. It was in these grand views of the harmony and economy of nature that Mr. Madison found the most congenial exercise of his own faculties, in the researches in which he was engaged, though ever mindful of the indispensable foundation of particular facts, carefully observed and cautiously compared, to sustain the superstructure of any sound generalization. Buffon himself has well described the apparently opposite qualities which must be combined in the successful student of nature, and which were united, in a rare degree, in Mr. Madison: "Les grandes vues d'un génie ardent, qui embrasse tout d'un coup d'œil, et les petites attentions d'un instinct laborieux qui ne s'attache qu' à un seul point."

We find in Mr. Madison's common-place book of this period a sketch of some observations, under the head of "Symmetry of Nature," which presents so remarkable an example of his early philosophical speculations, and of the strong tendency of his mind to general and comprehensive views, that we cannot forbear giving a few extracts from it. The question he examines is, how far the laws of nature have set an ultimate limit to the indefinite increase, by skill and industry, of those productions of the earth destined for the sustenance of man, and, con-

sequently, to the multiplication of his race. He introduces the subject with these preliminary reflections: —

"The planetary system — the greatest portion of the universe as yet brought under human observation — is regulated by fixed laws, and presents most demonstrably a scene of order and proportion. From analogy we conclude, that the whole universe, if it were equally understood, would exhibit equal proofs of a like arrangement. The general aspect of the earth leads us to remark the same plan of nature. Order and symmetry equally appear in the great outlines and in the most minute features of it.

"In the interior structure of the earth, and in the mineral kingdom which lies chiefly below its surface, less regularity, indeed, is to be perceived. But even here nature has her laws; and, if they are not more known, it may reasonably be ascribed to the imperfect insight to which her work is subjected. It is extremely probable, that, if the whole earth could be laid open and thoroughly examined from its centre to its surface in every direction, it would not only exhibit proofs of a general plan, but that many of the subterraneous parts which, on first examination, have appeared to be thrown together without order or design, would be found related to other parts, now unknown, or to the whole, so as to give meaning and method to what has, at present, no visible trace of either.

"In the animal and vegetable kingdoms, which overspread the surface of the earth, the contrivance

of nature strikes every beholder. Each kingdom has a general relation to the other, whilst the species in each have a relation and proportion to the species in the other, and to the other species in itself. With respect to every species whatsoever, including the human, the faculty of multiplication seems to be indefinite, and its number, consequently, to depend on the means of subsistence on the one hand, and its exposure to depredation and disease on the other. Among all other species than the human, nature has evidently established a certain law of proportion, which sets bounds to the operations of the reproductive faculty."

He then proceeds to show in what manner and by what means this law of proportion, setting bounds to the reproductive faculty, is maintained, — first, among plants; secondly, among herbivorous animals; thirdly, among the carnivorous class; after which he presents, in the following lucid statement, the particular question he proposed to discuss: —

"Man, who possesses the indefinite faculty of multiplication, in common with every other species, is distinguished from all by two remarkable characters. First, he is a prey to no other animals; second, he is not limited to the spontaneous supplies of food administered by nature, but can, by his reason and his hands, multiply them as he pleases. He can remove every spontaneous production of the earth not fit for his use, and substitute those which suit the particular constitution and appetite of himself, or of the animals on which he feeds. He can

destroy all other animals, and multiply these to the full extent of the resources reserved for them.

"Such being the prerogatives of man, — at once capable of breaking in on the law of proportion established among the other inhabitants of the globe, and not himself confined, like them, to such a law, — what is to restrain him from multiplying his race to any given number whatever? At least, he must be able, by extirpating every useless production of nature, to convert the whole productive power of the earth into a supply of those particular plants and animals which serve his own purpose, and to increase his race, as far as these will administer subsistence to it. Plausible as this inference may appear, it may be opposed by the following considerations."

He pursues the discussion at a length which does not admit of its insertion here; but, to satisfy the curiosity of the reader, the whole dissertation is given in the Appendix to this volume. It is a circumstance worthy of note, as evincing the thoroughness with which Mr. Madison investigated every subject presented to his contemplation, and the consequent tenacity of his mind for knowledge once acquired, that the third of a century later, when his long career of public service had finally closed, in an address before the Agricultural Society of Albemarle, delivered in 1818, — the year after his retirement from the Presidency, — he recurred to, and learnedly and conclusively enforced, the same views

contained in the paper from which the foregoing extracts are taken.[1]

In his political, no less than his philosophical, speculations, he was accustomed to reach his conclusions by the same process of careful analysis and comprehensive induction. Of this, a striking instance occurs in his correspondence with Mr. Jefferson, of the period now under review. Mr. Jefferson, in a letter of the 28th October, 1785, gives an interesting and touching account of a conversation he had with a poor woman whom he met in his rambles in the forest of Fontainebleau, and who described herself as a day-laborer, at eight sous, or fourpence sterling, the day, with two children to maintain, and an annual rent of thirty livres to pay for the hovel she occupied. This incident led the writer into a train of reflection on the unequal division of property, which occasioned the numberless instances of wretchedness he had observed in France, and which are to be observed all over Europe.

"What, I asked myself, could be the reason that so many should be permitted to beg, who are willing to work, in a country where there is a very considerable proportion of uncultivated lands? These lands are kept idle mostly for the sake of game. It should seem, then, that it must be because of the enormous wealth of the proprietors, which places them above attention to the increase of their revenues, by permitting these

[1] See Appendix.

lands to be labored. I am conscious that an equal division of property is impracticable. But, the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislators cannot invent too many devices for subdividing property, — only taking care to let their subdivisions go hand in hand with the natural affections of the human mind."

Mr. Jefferson concludes his reflections by enunciating the following general and somewhat bold propositions: —

"Whenever there are in any country uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right. The earth is given as a common stock, for man to labor and live on. If, for the encouragement of industry, we allow it to be appropriated, we must take care that other employment be furnished to those excluded from the appropriation. If we do not, the fundamental right to labor the earth returns to the unemployed. It is too soon yet in our country to say, that every man who cannot find employment, but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent; but it is not too soon to provide, by every possible means, that as few as possible shall be without a little portion of land."

These observations of Mr. Jefferson on the social condition of the Old World were received with a lively interest by Mr. Madison. They presented a problem which had long engaged his

earnest attention, as intimately connected with the science of government and the welfare of the human family. While concurring with his correspondent as to the salutary effects of the subdivision and diffusion of property, so far as the freedom of individual action and the sacredness of individual acquisition will permit, his inquiries into the history of the world had taught him, that there are evils inseparable from a redundant population, wherever existing, for which neither the division of property nor any other political device can afford an adequate remedy, and of which the only corrective is in restraints imposed and enforced by the laws of nature herself. In the following extracts from his reply, bearing date the 17th of June, 1786, he seems to have anticipated, in no small degree, the lights which the philosophy and researches of Malthus, fifteen or twenty years afterwards, threw upon this, the most difficult and interesting problem in the moral and social economy of the world.[1]

[1] When the works of Malthus subsequently appeared, Mr. Madison was one of those who most deeply felt the importance of the truths developed in them. In a letter to a friend, written thirty years after the period under review in the text, he says, "I have looked over Malthus, and think the world much indebted to him for the just views he has given of an interesting subject, and for the instructive application he makes of them to a state of things inseparable from old countries, and awaiting the maturity of young ones." In the controversy between Malthus and Godwin, Mr. Madison warmly espoused the side of the former; and in another letter to the same friend, alluded to above, he examines in detail, and refutes with great clearness and force, many of the arguments and statements of Malthus's perfectibilian adversary. — See letter of Mr. Madison to Richard Rush, Esq., then American Minister in London, dated the 21st of April, 1821.

"Your reflections on the idle poor of Europe form a valuable lesson to the legislators of every country, and particularly of a new one. I hope you will enable yourself, before you return to America, to compare with this description of people in France the condition of the indigent part of other communities in Europe, where the like causes of wretchedness exist in a lesser degree.

"I have no doubt that the misery of the lower classes will be found to abate, wherever the government assumes a freer aspect, and the laws favor a subdivision of property. Yet I suspect that the difference will not fully account for the comparative comfort of the mass of the people in the United States. Our limited population has probably as large a share in producing this effect as the political advantages which distinguish us.

"A certain degree of misery seems inseparable from a high degree of populousness. If the lands in Europe, which are now dedicated to the amusement of the idle rich, were parcelled out among the idle poor, I readily conceive the happy revolution which would be experienced by a certain proportion of the latter. But still would there not remain a great proportion unrelieved?

"No problem in political economy has appeared to me more puzzling than that which relates to the most proper distribution of the inhabitants of a country fully peopled. Let the lands be shared among them ever so wisely, and let them be supplied with laborers ever so abundantly, as there

must be a great surplus of subsistence [beyond what is required for the consumption of the owners and cultivators of the land], there will also remain a great surplus of inhabitants [beyond those owners and cultivators]; greater, by far, than will be employed in clothing themselves and those who feed them, and in administering to both every other necessary and comfort of life. What is to be done with this surplus?

"Hitherto we have seen them distributed into manufacturers of superfluities, idle proprietors of public funds, domestics, soldiers, merchants, mariners, and a few other less numerous classes. All these classes, notwithstanding, have been found insufficient to absorb the redundant members of a populous society; and yet a reduction of most of those classes enters into the very reform which appears so necessary and desirable."

Strong as was the bent of Mr. Madison's mind for these enlarged contemplations of the operations of nature and human society, in the general laws by which they are governed, he was soon recalled from them by the increasing urgency of public affairs, to which, as forming the field of his more active and responsible labors, we must now return.

CHAPTER XXIV.

Commissioners appointed by Virginia recommend Meeting of the proposed Politico-Commercial Convention to be held at Annapolis, on the second Monday of September — Mr. Madison's Solicitude respecting the Success of the Convention — He answers, with Firmness and Decision, the Objections made to the proposed Plan of Proceeding — Important Report in Congress, urging upon the States the Adoption of the Revenue System, arranged by Mr. Madison in 1783 — Formal Refusal of Legislature of New Jersey to comply with a Requisition of Congress — Proposal of Mr. Jay to surrender the Navigation of the Mississippi to Spain, for a Term of Years, in Consideration of certain Commercial Stipulations — Earnestly sustained by the Eastern States and by New York — Warmly opposed by the Southern States — The Policy of the Middle States, for a Time, in Suspense — Strong Disapprobation of the Proposal expressed by Mr. Madison — He sets out to the North, and visits Congress — Antagonism of Northern and Southern Parties in that Body carried to a great Height, in Consequence of Mr. Jay's Projected Treaty with Spain — Letter of Mr. Madison to Mr. Jefferson, describing Inauspicious Influence of this State of Things on Prospects of Annapolis Convention — Able Paper presented by Virginia Delegation in Congress, in Opposition to Mr. Jay's Project — Proceedings in Congress upon it — Remarkable Letter of Mr. Monroe, then Member of Congress, asserting the Existence of a Project on the Part of the Eastern States and New York for the Establishment of a Separate Confederacy — Proceedings of the Convention at Annapolis — It recommends the Assembling of another Convention, with General Powers, to meet in Philadelphia the following Year.

By the resolution of the legislature of Virginia, proposing a politico-commercial convention of the States to consider the expediency of certain altera-

tions of the articles of confederation, it was made the duty of the commissioners, appointed by the legislature, to transmit copies of the resolution to the several States, with a circular letter, inviting their concurrence and designating a time and place for the meeting of the convention. A quorum of the commissioners assembled in Richmond, a few weeks after the adjournment of the legislature, for the performance of this duty, and agreed upon Annapolis as the place, and the second Monday of September as the time, for holding the contemplated convention. So strong was the jealousy then existing in the public mind of the imputed "lust of power" in Congress, as well as of the supposed influence of the principal commercial cities, that, according to the statement of one of the commissioners,[1] in a communication to Mr. Madison, the chief consideration which governed them in fixing upon Annapolis for the meeting of the convention was to avoid, as much as possible, proximity to Congress on the one hand, and to the great marts of commerce on the other.

Mr. Madison naturally felt the deepest solicitude as to the reception which this first practical step towards a fundamental change in the constitution of the Confederacy should meet with, both in Congress and in the several States. How much the honor and happiness of the country, in his estimation, depended upon it, as well as how many adverse chances it had to encounter, he freely

[1] Edmund Randolph, Esq.

expressed, in a letter to Mr. Jefferson, of the 18th of March, 1786: —

"A quorum of the deputies," he said, "appointed by the legislature for a commercial convention, had a meeting in Richmond, shortly after I left it; and the attorney [Edmund Randolph] tells me it has been agreed to propose Annapolis for the place, and the second Monday in September as the time, of holding the convention. It was thought prudent to avoid the neighborhood of Congress and the large commercial towns, in order to disarm the adversaries to the object of insinuations of influence from either of those quarters. I have not heard what opinion is entertained of this project at New York [where Congress was then sitting], nor what reception it has found in any of the States.

"If it should come to nothing, it will, I fear, confirm Great Britain and all the world in the belief that we are not to be respected nor apprehended as a nation in matters of commerce. . . . A miscarriage of this attempt to unite the States in some effectual plan will have another effect of a serious nature. It will dissipate every prospect of drawing a steady revenue from our imports, either directly into the Federal Treasury or indirectly through the treasuries of the commercial States; and, of consequence, the former must depend for supplies solely on annual requisitions, and the latter on direct taxes, drawn from the property of the country. That these dependencies are, in an

alarming degree, fallacious, is put by experience out of all question. . . .

"This view of our situation presents the proposed convention as a remedial experiment, which ought to command every assent; but, if it be a just view, it is one which, assuredly, will not be taken by all, even of those whose intentions are good. I consider the event, therefore, as extremely uncertain; or, rather, — considering that the States must first agree to the proposition for sending deputies, that these must agree in a plan to be sent back to the States, and that these again must agree unanimously in a ratification of it, — I almost despair of success. It is necessary, however, that something should be tried; and, if this be not the best possible expedient, it is the best that could possibly be carried through the legislature here. And, if the present crisis cannot effect unanimity, from what future concurrence of circumstances is it to be expected?"

Mr. Madison was well aware, that there were those who would be disposed to cavil at the scheme of the proposed convention. He was, therefore, not surprised, when, the day after writing to Mr. Jefferson as above, he received a letter from Mr. Monroe, then one of the delegates of Virginia in Congress, informing him that the proposition found two classes of objectors in that body. The first, moving in the narrow circle of a rigid technicality, insisted that, by the letter of the articles of confederation, amendments of that instrument

could originate only with Congress; the second, expatiating in the wide field of a speculative expediency, contended that the proposed convention should have been one of unrestricted powers. The reply of Mr. Madison to these criticisms, given in his answer to Mr. Monroe's letter, is marked no less by a strong and resolute will than by a condensed and irresistible logic: —

"The question of policy, you say, is, whether it will be better to correct the vices of the confederation by recommendations [of Congress], gradually as it moves along, or by a convention. If the latter should be determined on, the powers of the Virginia commissioners are inadequate. If all, on whom the correction of these vices depends, were well informed and well disposed, the mode would be of little moment. But, as we have both ignorance and iniquity to combat, we must defeat the designs of the latter by humoring the prejudices of the former. The efforts for bringing about a correction, through the medium of Congress, have miscarried. Let a convention, then, be tried.

"If it succeeds in the first instance, it can be repeated, as other defects force themselves on the public attention, and as the public mind becomes prepared for further remedies. The Assembly here would refer nothing to Congress. They would have revolted equally against a plenipotentiary commission to their deputies for the convention. The option, therefore, lay between doing what was done or doing nothing.

"Whether a right choice was made, time only can prove. I am not, in general, an advocate for temporizing or partial remedies. But a rigor in this respect, if pushed too far, may hazard every thing. If the present paroxysm of our affairs be totally neglected, our case may become desperate."

The practical wisdom and justness of these views soon became apparent to all. In the face of the strong jealousies of Federal power, which prevailed in other States, as well as in Virginia, at the time when Mr. Madison brought forward his plan of a modified convention, nothing but certain and absolute discomfiture could have attended the proposition of an unrestricted convention. New York and Massachusetts, which had formerly given their sanction to it, would now, as the temper of their public councils clearly showed, have been strongly arrayed against it; and it is doubtful whether more than one of the States (New Jersey perhaps) could, at this period, have been brought into it. The single alternative, therefore, presented to the mind of the practical statesman was to slumber on, in listlessness and torpor, under exigencies which, if neglected, threatened ruin to the country; or, taking advantage of the circumstances of the moment, to inaugurate an experiment at reform, already assured of the support of a considerable number of the States, and which, though aiming primarily at the redress of one class of grievances, was

susceptible of being extended into a remedy for all.

The great desideratum was to do something to overcome the *vis inertiæ* of the public quiescence under the existing state of things, and to arouse and engage the energies of the nation in the serious pursuit of some practicable scheme of relief. If a movement in the right direction were once commenced, with a fair measure of popular and State support, it could be readily enlarged or accelerated, as occasion should require. Such was the policy of Mr. Madison's plan; and the more it was considered, the more it gained the assent of the enlightened friends of constitutional reform. The project of a convention, with undefined powers, vaguely talked of, for a while, in Congress, as a substitute for the Virginia proposition, was laid aside as unseasonable and premature; and the latter was left to work its proper effect upon the public mind, and, by degrees, to ripen and prepare it for the final achievement of a thorough and comprehensive reform.[1]

Mr. Madison derived additional encouragement, in the course of practical statesmanship he was pursuing, from witnessing the progress that the revenue system prepared by him in 1783, which

[1] That Mr. Madison, from an early day, looked to an entire reconstruction of the Federal system as his ultimate object, is sufficiently shown by his letter to Richard Henry Lee, of the 25th December, 1784, in which he says, "The perpetuity and efficacy of the present system cannot be confided in;" and the only question is, "in what mode and at what moment the experiment for supplying its defects ought to be made." — See also ante, vol. I. p. 229–31 and 311–13.

was warmly resisted at the time on account of its falling below the standard of a perfect theory of finance, though the best that was practicable,[1] had since made in the public opinion of the country. New York was the only State that still refused to accede to it in its most important feature, — the five per cent impost; and no greater homage could have been rendered to the correctness of his judgment with regard to that measure than the fact, that the able and distinguished man, who stood inflexibly opposed to him on the question of its original adoption, was now exerting all his talents, though in vain, to induce his State to come into it.[2]

A farther tribute to the wisdom of his conduct on that occasion, of which he could not but feel the high value, was found in the recent report of a committee of Congress, consisting of some of its ablest and most enlightened members. This committee, after reviewing the whole subject with the lights of three years' observation and experience, declared it to be their opinion that the system of 1783 "was freer from well-founded exceptions than any which the wisdom of Congress can devise;" and that, "having been under reference for three years, during which period numerous changes had taken place in the delegations of every State, and the system having received the repeated approbation of each successive Congress," it was the unquestionable duty of the several States to accede

[1] See vol. I. p. 429–31.

[2] Colonel Hamilton. — See History of American Republic, vol. III. p. 171, 172, and 221–8.

to it, "as the sole means, in their judgment, of preserving the sacred faith of the Confederacy."[1]

The report here referred to, which was sanctioned and adopted by a formal vote of Congress, may be classed among the agencies which most powerfully impressed upon the public mind the necessity of a radical change in the existing constitution of the Confederacy. Presenting, on the one hand, the large amount of the engagements for which the public faith was pledged, and the fulfilment of which was demanded by the most sacred obligations that could bind the honor of a nation, and, on the other, the pitiably inadequate and precarious sums which were the utmost that could be obtained from the States by the most earnest and pressing applications of Congress, it deduced and proclaimed the mortifying conclusion, "that, a reliance in future on the requisitions of Congress upon the States, as a source whence moneys are to be drawn to discharge the engagements of the Confederacy, definite as they are in time and amount, would be not less dishonorable to the understandings of those who entertain such confidence, than it would be dangerous to the welfare and peace of the Union."

The report of the committee terminated with this impressive admonition: —

"Thus circumstanced, after the most solemn

[1] The committee consisted of Mr. King, Mr. Pinckney, Mr. Kean, Mr. Monroe, and Mr. Pettit. — See their report of 15th February, 1786, in Journals of old Congress, vol. IV. p. 618–20.

deliberation and under the fullest conviction that the public embarrassments are such as above represented, and that they are daily increasing, the committee are of opinion that it has become the duty of Congress to declare most explicitly, that the crisis has arrived when the people of these United States, by whose will and for whose benefit the Federal Government was instituted, must decide whether they will support their rank as a nation by maintaining the public faith at home and abroad; or whether, for want of a timely exertion in establishing a general revenue and thereby giving strength to the Confederacy, they will hazard, not only the existence of the Union, but of those great and invaluable principles for which they have so arduously and honorably contended."

In a short month after these representations of Congress, an occurrence took place which furnished a farther and monitory example of the extent to which the disregard of Federal authority had now gone, — a case, not merely of failure, but of absolute refusal on the part of one of the States to comply with the requisitions of Congress. A letter of Mr. Monroe to Mr. Madison, of the 18th of March, 1786, informed him that the House of Delegates of New Jersey, in considering a late requisition of Congress, resolved that, "having entered into the confederation upon terms highly disadvantageous to them, from the necessity of public affairs, and a confidence that those points in which they were aggrieved would be remedied,

and finding that this was not the case, and that a compact, founded in such unequal principles, was likely to be fettered upon them, they would not comply with the requisition, until their grievances were redressed." This circumstance naturally produced both displeasure and uneasiness in Congress; and a committee was appointed to proceed, without delay, to Trenton, and to represent to the legislature of New Jersey, "in the strongest terms, the fatal consequences which must inevitably result to that State, as well as to the rest of the Union, from such an example." The expostulatory mission produced a rescission of the resolution which had been adopted, but not a compliance with the requisition for supplies.[1]

Such an incident as this could not fail to make a deep impression on a mind like Mr. Madison's, alive to every symptom of the political condition of the country. His reflections upon it were thus expressed, in his answer to Mr. Monroe, of the 9th of April, 1786: —

[1] See Journals of Congress, vol. IV. p. 622 and 624, and Madison's Debates, vol. II. p. 710–11. —— A short time previous to the date of Mr. Monroe's letter referred to above, he was married to a beautiful young lady of New York, — Miss Kortright. In a letter of the 11th February, 1786, to Mr. Madison, he gives to his friend this oracular intimation of the approaching event: "If you visit this place shortly, I will present you to a young lady who will be adopted a citizen of Virginia in the course of this week." Mr. Madison offers the shy congratulations of a bachelor, in the following playful but hearty terms: "I am just favored with yours of the 11th and 16th of February. A newspaper, since the date of the latter, has verified to me your inauguration into the mysteries of wedlock, of which you dropped a previous hint in the former. You will accept my sincerest congratulations on this event, with every wish for the happiness it promises."

"The step taken by New Jersey was certainly a rash one, and will furnish fresh pretexts to unwilling States for withholding their contributions. In one point of view, however, it furnishes a salutary lesson. Is it possible, with such an example before our eyes of impotency in the Federal system, to remain sceptical with regard to the necessity of infusing more energy into it? A government cannot long stand, which is obliged, in the ordinary course of its administration, to court a compliance with its constitutional acts from a member not of the most powerful order, situated within the immediate verge of authority, and apprised of every circumstance which should remonstrate against disobedience.

"The question, whether it be possible and worth while to preserve the union of the States, must be speedily decided some way or other. Those who are indifferent to its preservation would do well to look forward to the consequences of its extinction. The prospect, to my eye, is a gloomy one indeed." [1]

[1] The case of New Jersey, here commented upon by Mr. Madison, is not a solitary instance of the positive refusal of a State, under the articles of confederation, to respect a requisition of Congress. Connecticut afterwards did the same thing, as appears from a statement made by Mr. Madison in the Federal convention, a year later (30th June, 1787), in the presence of the Delegates of that State, and not contradicted by them. "Of all the States," said he, "Connecticut was, perhaps, the least able to urge this plea [fulfilment of her Federal obligations]. Besides the various omissions to perform the stipulated acts, from which no State was free, the legislature of that State had, by a pretty recent vote, *positively refused* to pass a law for complying with the requisitions of Congress, and transmitted a copy of the vote to Congress."

In the midst of these occurrences, all tending to enforce with such powerful effect the necessity of a radical change in the Federal system, a proceeding unfortunately took place in Congress, calculated most seriously to impair that harmony and mutual cordiality among the States which was indispensable to its successful accomplishment. In the preceding summer, Don Gardoqui was sent by the government of Spain to the United States, clothed with full powers, though under the unimposing title of *encargado de negocios*, to conclude a final settlement of all questions in controversy, or of mutual interest, between the two countries. Congress, on their part, gave like powers to Mr. Jay, secretary for foreign affairs; but, by a resolution of the 25th of August, 1785, he was instructed "particularly to stipulate the right of the United States to their territorial bounds, and the free navigation of the Mississippi, from the source to the ocean, as established in their treaties with Great Britain, and not to conclude or sign any treaty, compact, or convention with the said *encargado de negocios*, until he hath previously communicated it to Congress, and received their approbation." [1]

On the 29th of May, 1786, Mr. Jay addressed a communication to the president of Congress, informing him, that, "in his negotiations with Don Gardoqui, he experienced certain difficulties, which, in his opinion, should be so managed as

[1] Secret Journals of Congress, vol. III. pp. 585, 586.

that even the existence of them should remain a secret for the present," and recommending the appointment of a committee, who should be empowered "to instruct and direct him on every point relative to the proposed treaty with Spain." This communication was laid by the president of Congress before that body on the 31st of May, and was referred by them to a committee of three, — Mr. King, of Massachusetts; Mr. Pettit, of Pennsylvania; and Mr. Monroe, of Virginia.[1]

From the terms of Mr. Jay's communication, it was naturally inferred that the object in view was to get rid of the restrictions imposed by the resolution of the 25th of August, 1785; and it appeared, a few weeks afterwards, by a more formal development of his plan, to which we shall have occasion to advert, that he contemplated a treaty, mainly of commercial stipulations, limited in its duration to a period of twenty-five or thirty years, but of which one of the articles should be an agreement, on the part of the United States, to forbear the use of the navigation of the Mississippi below their limits to the ocean. The forbearance in question, resting solely upon the terms of the projected treaty, was implied to be of the same duration with the treaty itself.

Mr. Monroe, writing to Mr. Madison on the same day on which the communication of Mr. Jay was referred to the committee of three, of which he was a member, gives the following account of what had occurred: —

[1] Secret Journals of Congress, vol. iv. pp. 43 and 44.

"Since my last, a letter has been received from Mr. Jay, to the following effect, — 'that difficulties had taken place in his negotiations with Gardoqui, and requesting that a committee be appointed, without, to direct and control the said negotiation.' It was immediately perceived that the object was to relieve him from the instruction respecting the Mississippi, and to get a committee to cover the measure. That this would be thus brought forward, I was apprised upon my first arrival here in the winter, and have been acquainted with all the previous arrangements which those in favor of it found it necessary to make, in order to prepare for its reception.

"His plan is, from evidence conclusive to my own mind, not to be simply quiet as to that object, but to enter into arrangements, at least for a certain term, for the occlusion of the river; and further, to enter into a reciprocal guarantee of the respective possessions of the two contracting parties in America, in consideration of which both are to be admitted reciprocally, they into our ports, and we into theirs in Europe, upon an equal footing with the citizens and subjects of each other. What we are to gain on our part, then, simply is the aid of this power in favor of the posts and this commercial stipulation.

"When the letter was presented, Mr. King, who is associated in this business, in a long speech, in which he took a view of the insidious designs of France, in the late treaty especially, and of the

little dependence to be put on her in future, made a trial of the pulse of the House on the subject. The letter was committed. Pettit, King, and myself are of the committee. As yet, the committee have not met: to-morrow, they will. Jay will attend it."

Considering the proposed arrangement as one having in view mainly the interests of the Eastern States,[1] to whom the prospect of a valuable market for the produce of their fisheries and forests had been held out in the supply of both the American and European dominions of Spain, Mr. Monroe proceeds to speculate on the probable course of the representatives of the Middle States with regard to the measure. Even at that early day, he thinks, New York was looking wistfully to drawing the commerce of the great West to her seaport, down the channel of the Hudson, and would feel no aversion, therefore, to shutting up the Mississippi; while Pennsylvania, by motives of a personal character operating upon the conduct of her leading representative at the time, Mr. Pettit, would be likely, he apprehended, to throw her vote into the

[1] It is certain that the delegates of the Eastern States in Congress were particularly zealous in urging Mr. Jay's projected arrangement with Spain. Colonel Henry Lee, then one of the delegates of Virginia in Congress, and himself not unfriendly to the project, wrote to General Washington, while the subject was pending, as follows: — "The Eastern States consider a commercial connection with Spain as the *only* remedy for the distresses which oppress their citizens, most of which, they say, flow from the decay of their commerce. Their delegates have, consequently, zealously pressed the formation of this connection, as the only effectual mode to revive the trade of their country." — See Sparks's Washington, vol. IX. pp. 205, 206.

Eastern scale, and also to use her influence with her neighbors, New Jersey and Delaware, to induce them to join in the same combination.

Mr. Madison, so long and so devotedly the champion of the just claim of the United States to the free navigation of the Mississippi, could not, at any time, have received the intelligence of these proceedings with other than the most painful impression. But this impression was now the more keenly felt from the consideration of the repulsive effect which, he well knew, those proceedings would have on the sentiments of the Southern States, with regard to the great object of strengthening the Union by the establishment of an efficient national government. On the 21st of June, 1786, he wrote to Mr. Monroe, in the following terms of eloquent indignation at the meditated injustice: —

"Your favor of the 31st ultimo did not come to hand till two days ago. As I expect to see you in a short time, I will suspend the full communication of my ideas on the subject of it, till I have that pleasure. I cannot, however, forbear, in the mean time, expressing my amazement that a thought should be entertained of surrendering the Mississippi, and of guaranteeing the possessions of Spain in America. . . .

"It should be remembered that the United States are not now extricating themselves from war, — a crisis which often knows no law but that of necessity. The measure in question would be a voluntary barter, in time of profound peace, of the rights

of one part of the empire for [an advantage gained to] the interests of another part. What would Massachusetts say to a proposition for ceding to Great Britain her right of fishery as the price of some stipulation in favor of tobacco?

"Again, can there be a more short-sighted or dishonorable policy than to concur with Spain in frustrating the benevolent views of nature,— to sell the affections of our ultra-montane brethren; to depreciate the richest fund we possess; to distrust an ally whom we know to be able to befriend us and to have an interest in doing it, against the only nation whose enmity we can dread; and, at the same time, to court, by the most precious sacrifices, the alliance of a nation whose impotency is notorious, who has given no proof of regard for us, and the genius of whose government, religion, manners, &c., unfit them, of all the nations in Christendom, for a coalition with this country? . . .

"Viewing the matter in this light, I cannot but flatter myself, that, if the attempt you apprehend should be made, it will be rejected with becoming indignation. . . . In the mean time, it is mortifying to see the other States, or rather their representatives, pursuing a course which will make the case more and more difficult, and put arms into the hands of the enemies to every amendment of our Federal system. God knows that they are formidable enough in this State, without such an advantage. With it, their triumph will be certain and easy."

In a few days after the date of this letter, Mr. Madison set out on his intended excursion to the North. Motives of both a private and public character entered into this excursion. The period for the meeting of the convention at Annapolis was approaching; and Mr. Madison's solicitude respecting its results made him naturally desirous of an interchange of views with the leading men of other States, and of obtaining from every source the fullest possible information concerning the situation of the Confederacy, previous to the assembling of the convention. He had also strong yearnings of friendship to gratify in visiting on his route, as well as in Philadelphia, Princeton, and New York, many persons whom he highly valued, and some of whom he had not seen for years.

His journey was performed on horseback, and led him through a part of the "Valley" of Virginia, along the western base of the Blue-Ridge Mountains. This afforded him an opportunity of witnessing that sublime spectacle of nature — the passage of the Potomac through its mountain barrier — which Mr. Jefferson so glowingly describes in his "Notes," as "worth a voyage across the Atlantic;" and of observing, at the same time, the progress of those improvements in the channel of the river, for which he himself, as the co-laborer of Washington, had been so usefully instrumental, two years before, in obtaining the patronage of the legislature. We cannot forbear to introduce here a brief extract of a letter he wrote at the

time to Mr. Jefferson, as showing how eagerly his mind sought relief from the thorny anxieties of politics in the congenial contemplation of these noble works of nature and public utility: —

"As I came by the way of Winchester, and crossed the Potomac at Harper's Ferry, I had an opportunity of viewing the magnificent scene which nature here presents. I viewed it, however, under great disadvantages. The air was so thick that distant objects were not visible at all, and near ones not distinctly so. We ascended the mountain also at a wrong place, fatigued ourselves much in traversing it before we gained the right position, were threatened the whole time with a thunder-storm, and finally overtaken by it. Had the weather been favorable, the prospect would have appeared to peculiar advantage; being enriched with the harvest in its full maturity, which filled every vale, as far as the eye could reach.

"I had the additional pleasure here of seeing the progress of the works on the Potomac. About fifty hands were employed at these falls, or rather rapids, who seemed to have overcome the greatest difficulties. Their plan is to slope the fall by opening the bed of the river, in such a manner as to render a lock unnecessary, and by means of ropes fastened to the rocks, to pull up and ease down the boats, where the current is most rapid. At the principal falls, one hundred and fifty hands, I was told, were at work, and that the length of the canal will be reduced to less than a mile, and

carried through a vale, which does not require it to be deep. Locks will here be unavoidable."

After speaking with patriotic exultation of similar works of public improvement then going forward, under a spirited impulsion, in other parts of Virginia, as well as in Maryland, Pennsylvania, and Delaware, he adds: —

"These fruits of the Revolution do great honor to it. I wish all our proceedings merited the same character. Unhappily, there are but too many belonging to the other side of the account."

Pursuing his journey, he went on to New York, where Congress was then sitting, and where he had the opportunity of frequent conferences with his friends from other States, on the critical condition of public affairs. From thence he made a brief excursion with Mr. Monroe to the valley of the Mohawk River, where both of them had purchased lands; and, returning through New York to Philadelphia, he continued to sojourn in the latter city until the time arrived for the meeting of the convention at Annapolis.

Nine States of the Confederacy had appointed delegates to that convention. The remaining four States — some from one cause, and some from another — had failed to make any appointment. It was certain, therefore, that there would not be a complete representation of all the States in the approaching convention.

But the most inauspicious omen, with regard to the success of its deliberations, arose from the

declared antagonism between the Northern and Southern portions of the Confederacy, which had grown out of the agitation in Congress of the project for the temporary occlusion of the Mississippi. Mr. Jay, on the 3d day of August, 1786, made an elaborate exposition, before that body, of his proposed arrangement with the Spanish envoy; enforcing it by considerations of policy, which, however specious, were wanting in catholic largeness of views, and, above all, in that essential foundation of all sound policy, justice.[1] Though the sense of Congress had not yet been formally taken on the project, it was understood, that, besides the support of the four Eastern States, the votes of the representatives of several of the Middle States were already secured to it, and that the secretary himself was earnestly and inflexibly intent on its prosecution. This untoward condition of things naturally brought great discouragement to the mind of Mr. Madison; and his anxieties and apprehensions were communicated to Mr. Jefferson, in a letter written from Philadelphia, the 12th day of August, 1786.

"The States," said he, "which have appointed deputies to Annapolis, are New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, and Virginia. Connecticut declined, not from a dislike to the object, but to the idea of a convention, which, it seems, has been rendered obnoxious by some internal conventions that have embarrassed the legislative authority. Mary-

[1] See Secret Journals of Congress, vol. IV. pp. 44, 63.

land, or rather her Senate, negatived an appointment, because they supposed the measure might interfere with the plans or prerogatives of Congress. North Carolina has had no legislative meeting since the proposition was communicated.[1] South Carolina supposed she had sufficiently signified her concurrence in a general regulation of trade by vesting the power in Congress for fifteen years.

"Many gentlemen, both within and without Congress, wish to make this meeting subservient to a plenipotentiary commission for amending the confederation. Though my wishes are in favor of such an event, yet I despair so much of its accomplishment at the present crisis, that I do not extend my views beyond a commercial reform. To speak the truth, I almost despair even of this. You will find the cause, in a measure, now before Congress, of which you will receive the details from Colonel Monroe. I content myself with hinting that it is a proposed treaty with Spain, one article of which shuts the Mississippi for twenty or thirty years.

"Passing by the other Southern States, figure to yourself the effect of such a stipulation on the Assembly of Virginia, already jealous of Northern politics, and which will be composed of thirty members from the Western waters, — of a majority of others attached to the Western country from interests of their own, of their friends, or their constituents, — and of many others who, though indifferent to the Mississippi, will zealously play

[1] North Carolina subsequently appointed deputies.

off the disgust of its friends against Federal measures. Figure to yourself its effect on the people at large on the Western waters, who are impatiently waiting for a favorable result to the negotiation with Gardoqui, and who will consider themselves sold by their Atlantic brethren. Will it be an unnatural consequence if they consider themselves absolved from every Federal tie, and court some [foreign] protection for their betrayed rights?"

The project of Mr. Jay continued, for several weeks, to be the subject of earnest deliberation, and frequently of warm debate, in Congress. On the one hand, it was proposed by the friends and patrons of the project to repeal the restrictions contained in the resolution of the 25th of August, 1785, with regard to boundaries and the navigation of the Mississippi; on the other, by its adversaries, to revoke altogether the commission which had been granted to Mr. Jay to treat with the envoy of Spain. In support of the latter proposition, an elaborate and well-reasoned paper was presented by the delegates of Virginia, in which they reviewed in detail, and controverted with great earnestness and force, the views and arguments of the secretary of foreign affairs.[1] At length, on the 29th of August, 1786,

[1] This paper concluded with a proposition for the downward navigation of the Mississippi for *exports*, subject to the payment of a duty to Spain; but *imports up the river* to be prohibited. Mr. Monroe, on the 14th of August, 1786, wrote to Mr. Madison, then in Philadelphia, informing him that he and his colleague, Mr. Grayson, thought of making this proposition, and desired his opinion on it. Mr. Madison answered on the 17th of August, and strongly stated his objections to it, as descending from the high ground of right that ought to be

it was resolved, by the votes of the four Eastern States, re-enforced by New York, New Jersey, and Pennsylvania, against the votes of the five Southern States, that the resolution of the 25th of August, 1785, be repealed; of which the intended effect was to relieve the Secretary, in the pending negotiation, from any restriction concerning the navigation of the Mississippi.[1]

It being, however, an express provision of the articles of confederation that "no treaties with foreign powers should be entered into but by the assent of nine States," and the resolution of the 25th of August, 1785, having received that sanction, it was contended by the Southern representatives, that the vote of seven States was not competent to its repeal. It was moved, therefore, to inform the secretary that Congress does not consider him authorized by the aforesaid vote to proceed, in his negotiation, upon other principles than those contained in the resolution of the 25th of August, 1785; and that, if he should do so, the United States would not be bound, under the law of nations, to ratify and confirm a compact so made, without due constitutional authority. This motion, unanimously sustained by the five Southern States, was unanimously rejected by the same seven States which had voted in favor of repealing the restrictions of the 25th of August, 1785.[2]

maintained. It was, nevertheless, submitted.—See Secret Journals of Congress, vol. IV. pp. 105, 106.

[1] See Secret Journals of Congress, vol. IV. pp. 81, 110.

[2] See Secret Journals of Congress, vol. IV. pp. 3, 15.

These continued geographical collisions in Congress, on a question so fundamental in its character, both from the political and the material interests it involved, produced great heats at the time, and, with other causes, gave rise to serious doubts whether it would be longer possible to preserve the union of the States. Indeed, so great was the dissatisfaction of the Eastern States at the opposition they met with in the consummation of a measure which they pursued with extraordinary zeal, that there is reason to believe they had, at this time, well-nigh determined to draw off from their connection with the Southern States, and to establish a separate Confederacy of their own. Mr. Monroe, in a confidential but official letter written from New York, the 12th of August, 1786, and addressed by him as one of the delegates of Virginia in Congress to Patrick Henry, then governor of the State, makes the following statement: —

"Certain it is that committees are held in this town of Eastern men, and others of this State, upon the subject of a dismemberment of the States east of the Hudson from the Union, and the erection of them into a separate government. To what length they have gone I know not; but have assurances as to the truth of the above position, with this addition to it, — that the measure is talked of in Massachusetts familiarly, and is supposed to have originated there. The plan of the government, in all its modifications, has even been contemplated by them."[1]

[1] The letter, from which the above extract is given, is a very long and interesting one, reciting, in great detail, conversations of the

A letter of similar import was addressed by Mr. Monroe to Mr. Madison, on the 3d of September, 1786, which, though somewhat colored perhaps by the political excitements of the period, throws so vivid a light upon a most eventful and trying era of our national progress, and is at the same time so suggestive of lessons for the present and the future, that the truth of history seems to require it should be submitted, as we find it, to the contemplation of the reader: —

"We have as yet done nothing but under the Constitution, and, almost in all cases, the rules of the House; nor shall we, I apprehend. Some gentlemen, on the opposite side, hinted their determination to withdraw, if the question should be brought on as to the validity of the repeal. Whether we shall take any other step is undecided. I doubt the propriety of so doing, further than moving for permission to transmit copies of the journals to the States for their information, and to obtain instructions to their delegates.

"I should suppose the secretary would not proceed until he finds himself supported by the States to whom the seven delegations belong. Upon New Jersey and Pennsylvania, then, it rests. To engage their leading men is now the object. Most probably he has already consulted them; but his consulta-

writer with Mr. Jay, as well as the proceedings in Congress, relative to the project for a temporary surrender of the Mississippi. A copy of it, with other papers of Mr. Henry, was presented by his son and representative to the Virginia Historical Society, in whose archives it still exists.

tions, and those of his party, I doubt not, have been founded on partial representations. To remove their impression, a view of the journals may be necessary.[1]

"I consider the party, especially Jay and the principal advocates, as having gone too far to retreat. They must either carry the measure, or be disgraced (as the principal already hath been by the vote of five States); and, sooner than suffer this, they will labor to break the Union. I, therefore, suspect they have been already (and, indeed, have too much reason for my suspicion) intriguing with the principal men in these States, to effect that end in the last resort. They have even sought a dismemberment to the Potomac; and those of the party here have been sounding those in office thus far.

"To defeat the measure, therefore, completely, we must follow their movements everywhere; advise the leading men of their designs, the purposes they are meant to serve, &c.; and, in the event of the worst extremity, prepare them for a union with the Southern States. I fear some of those in Pennsylvania will have a contrary affection; but it must be removed, if possible. A knowledge that she was on our side would blow this whole intrigue in the air. To bring this about, therefore, is an important object to the Southern interest. If a dismemberment takes place, that State must not be added to the Eastern scale. It were as well to

[1] It will be seen hereafter, that the appeal to those two States resulted in their coming over to the side of the South. — Post, chap. XXVI. p. 198.

use force to prevent it, as to defend ourselves afterwards.

"I consider the convention at Annapolis a most important era in our affairs. The Eastern men, be assured, mean it as leading further than the object originally comprehended. If they do not obtain that things shall be arranged to suit them in every respect, their intrigues will extend to the objects I have suggested above. Pennsylvania is their object. Upon succeeding or failing with her, will they gain or lose confidence. I doubt not the emissaries of foreign governments will be on the ground. In short, I do consider this convention as requiring your utmost exertions, in the change things will infallibly take, as well to obtain good as to prevent mischief. Mr. Randolph will, I hope, devote himself to the public on this occasion, and not suffer himself to be taken off by his professional pursuits before the convention dissolves.

"I write you freely, without the cover of a cipher, knowing you have not yours with you. Indeed, I fear nothing to the public or myself from a publication; for I am satisfied, if the public were acquainted with the conduct of these unworthy servants, their consequence would be of short duration. Prevail, I beg of you, on Colonel Mason to attend the convention. It will give him data to act on, afterwards, in the State. I have always considered the regulation of trade in the hands of Congress as necessary to preserve the Union. Without it, it will infallibly tumble to pieces. But I earnestly wish the admis-

sion of a few additional States into the Confederacy in the Southern scale."

It was amid these political distractions and contentions that the convention assembled at Annapolis. Of the nine States that had appointed deputies, Virginia, Delaware, Pennsylvania, New Jersey, and New York were the only ones from which representatives were present. The non-attendance of deputies from the three Eastern States, by which appointments had been made, could not but excite attention and remark, as their interests were supposed to be peculiarly concerned in the regulation of commerce by the national authority, which was the special object of the convention.[1] With this imperfect representation of the States, it was decided at once by those who were present, to be both inexpedient and improper to enter upon the execution of the commission under which they were assembled. But it was also felt, that the occasion was one which, in view of the increasing evidences of the defects of the confederation, and the dangers that menaced the Union, ought to be improved to invite the attention of the States respectfully, but earnestly, to the necessity of a remedy adequate to the magnitude of the evil.

On the 11th day of September, 1786, the day appointed for the meeting of the convention, Mr.

[1] General Washington, in his correspondence with both General Knox and Colonel Humphreys, expressed, very emphatically, his surprise at the absence of the Eastern States; and the former, in his reply, said, "It is difficult to give a precise answer." — Sparks's Washington, vol. IX. pp. 223, 226, and 513.

Madison wrote to Mr. Monroe from Annapolis in these terms: —

"I have two letters from you not yet acknowledged, — one of the first, the other of the third instant. Nothing could be more distressing than the issue of the business [relative to the Mississippi] stated in the latter. If the affirmative vote of seven States be pursued, it will add the insult of trick to the injury of the thing itself. Our prospect here makes no amends for what is done with you. Delaware, New Jersey, and Virginia alone are on the ground. Two commissioners attend from New York, and one from Pennsylvania. Unless the sudden attendance of a much more respectable number takes place, it is proposed to break up the meeting with the recommendation of another time and place, and an intimation of the expediency of extending the plan to other defects of the confederation."

It appears, accordingly, from the record of their proceedings, that, after a full interchange of opinion among the commissioners on the first day of their meeting, it was unanimously agreed that a committee be appointed to prepare the draught of a report to be made to the States by which they were respectively deputed.[1] The preparation of this address devolved on Colonel Hamilton, who was one of the two commissioners in attendance from New York. The draught was under the consideration of the

[1] See Journal of the Convention in Bioren and Duane's edition of the Laws of the United States, vol. I. pp. 55–58.

convention two successive days, and, after amendments made in it, was unanimously agreed to, and directed to be signed by their chairman, the venerable John Dickinson, who attended as one of the commissioners of the State of Delaware.

It has been alleged, rather complainingly,[1] that the address, as it came from the hands of Colonel Hamilton, was considerably toned down by the influence of the Virginia delegates. But, with the lively recollection in their minds of the mischievous reaction produced three years before, in the legislature of their own State, by the imperious spirit and latitudinarian doctrines of the famous "Letter to Rhode Island,"[2] it is not at all extraordinary that they should deem it wiser, as well as more gracious, in the present instance, to "make persuasion do the work of fear."

The address, as finally adopted, represented that, as the express terms of the powers granted to the commissioners supposed a deputation from all the States, they did not conceive it advisable to proceed on the business of their mission with a defective and partial representation; but, deeply impressed with the magnitude and importance of the object intrusted to them, they could not forbear the expression of their earnest and unanimous wish, that "speedy measures may be taken to effect a general meeting of the States in a future convention for the same and such other purposes as the condition of

[1] History of American Republic, vol. III. p. 163.

[2] See ante, vol. I. pp. 434, 436.

public affairs may be found to require." Declining to enter into a detail of the facts and circumstances, already familiar to those whom they addressed, which evinced the propriety of a convention with more enlarged powers, they simply declared their opinion that the circumstances alluded to were such "as to render the situation of the United States delicate and critical, calling for the exertion of the united virtue and wisdom of all the members of the Confederacy." They concluded their address with the recommendation that "the States by which they were severally delegated should concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States; to devise such further provisions as shall appear necessary to render the constitution of the Federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled, as, when agreed to by them and afterwards confirmed by the legislatures of every State, will effectually provide for the same."

Thus had Mr. Madison the satisfaction of seeing the movement set on foot by him, notwithstanding the adverse circumstances and perverse passions which, from time to time, seemed to threaten it with failure, going steadily forward, under the auspices of a wise and temperate direction, and with the

important support of the central States of the Confederacy, to the consummation of its ultimate aim in the establishment of an efficient national government.

CHAPTER XXV.

Mr. Madison returns to Virginia to attend the Annual Meeting of the Legislature — Prepares and introduces a Bill for the appointment of Commissioners to the Proposed Convention at Philadelphia — Bill passed, and Commissioners appointed — Lead of Virginia promptly followed by the Middle States — Proceedings of the Legislature on the Project before Congress for the Relinquishment of the Mississippi — Spirited Remonstrance against it drawn by Mr. Madison — Petitions for an issue of Paper Money — Opposed by Mr. Madison, and rejected — Act authorizing Tobacco to be received in payment of Public Dues — Instalment Law proposed — Earnestly resisted by Mr. Madison, and finally defeated — Repeal of Act for Incorporation of the Protestant Episcopal Church — One of the Petitions for its Repeal drawn by Mr. Madison — Continues his arduous Labors in connection with the General Revision of the Laws — Tribute by Judge Pendleton and Mr. Jefferson to the Value and Importance of his Services in that great Work — Reasons for not renewing at the Present Session his Efforts with regard to the Question of the British Debts — Financial Embarrassments of the State and Country — Summary Review of Mr. Madison's Services and Labors during his career in the Legislature of the State — Again appointed one of the Delegates of Virginia to the Congress of the Confederation.

From Annapolis Mr. Madison returned to Philadelphia; and, after remaining there three or four weeks, he came back to Virginia, to attend the annual meeting of the legislature of the State, which was to convene at Richmond on the 16th day of October. A quorum of the House of Dele-

gates, of which he was a member, was not formed, however, until the 23d of the month. In his intercourse with his colleagues, he lost no opportunity of impressing upon them his views of the critical condition of the Confederacy, and the necessity of firm and timely action to avert the dangers with which it was threatened.

The report of the commissioners at Annapolis was taken into consideration, in committee of the whole, the second week of the session; and, on the 3d day of November, 1780, a resolution was unanimously agreed to by the House, that "an act ought to pass, in conformity to the report from Annapolis, for the appointment of commissioners, on the part of Virginia, to meet those who should be appointed by the other States in convention at Philadelphia, on the second Monday in May next, to devise such further provisions as shall appear necessary to render the constitution of the Federal government adequate to the exigencies of the Union."

A select committee, consisting of Mr. Matthews (who had been chairman of the committee of the whole), Mr. George Nicholas, Mr. Madison, General Thomas Nelson, Mr. Mann Page, Colonel Theodorick Bland, and Mr. Corbin, was immediately appointed to prepare and bring in the bill. On the 7th day of November, the bill was reported to the House; and, on the 9th, it was passed without opposition.

As Virginia was the first State to act on the sub-

ject, and as her proceedings would have no small influence on her sister States, it was felt that they should be invested with all the dignity and solemnity which a grave and impressive eloquence, corresponding with the peculiar magnitude of the occasion, could give them. Mr. Madison was naturally chosen by his brethren of the committee to perform this task. We insert here the preamble of the act, as it came from his pen, and as it was adopted, without the slightest modification, by both branches of the legislature. So lofty and magnanimous an appeal to the patriotism and enlightened conscience of the nation could not have been without a profound effect at the time, and awakens, even now, a responsive but melancholy echo, reverberated from the neglected monuments of the past: —

"Whereas the General Assembly of this Commonwealth, taking into view the actual situation of the Confederacy, as well as reflecting on the alarming representations made, from time to time, by the United States in Congress, — particularly in their act of the 15th day of February last, — can no longer doubt that the crisis is arrived at which the good people of America are to decide the solemn question, whether they will, by wise and magnanimous efforts, reap the just fruits of that independence which they have so gloriously acquired, and of that Union which they have cemented with so much of their common blood; or whether, by giving way to unmanly jealousies

and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the Revolution, and furnish to its enemies an eventual triumph over those by whose virtue and valor it has been accomplished: And whereas the same noble and extended policy, and the same fraternal and affectionate sentiments, which originally determined the citizens of this Commonwealth to unite with their brethren of the other States in establishing a Federal government, cannot but be felt with equal force now, as motives to lay aside every inferior consideration, and to concur in such farther concessions and provisions as may be necessary to secure the great objects for which that government was established, and to render the United States as happy in peace as they have been glorious in war." Then follows the enactment for the appointment, by joint ballot of both Houses, of seven commissioners on the part of Virginia, to attend the General Convention proposed to be held at Philadelphia.

As a contemporary illustration of the spirit of this imposing measure of the legislature of Virginia, we subjoin also an extract from a letter of Mr. Madison to General Washington. On the 5th of November, 1786, General Washington had written to him, expressing an earnest solicitude that "Virginia would take the lead in promoting the great and arduous work" of a reconstruction of the Federal government, and, at the same time, communicated to him the gloomy intelligence he

had just received from General Knox, with regard to the intestine troubles that had then recently broken out in Massachusetts and the adjacent States. Mr. Madison, in his answer of the 8th of November, — the day before the passage of the act for the appointment of commissioners to the Philadelphia Convention, — wrote as follows: —

"If the lessons which this intelligence inculcates should not work the proper impressions on the American public, it will be a proof that our case is desperate. Judging from the present temper and apparent views of our Assembly, I have some ground for leaning to the side of hope. The vote against paper money has been followed by two others of great importance. By one of them, petitions for applying a scale of depreciation to the military certificates was unanimously rejected. By the other, the expediency of complying with the recommendation from Annapolis, in favor of a general revision of the Federal system, was unanimously agreed to. A bill for the purpose is now depending, and in a form which attests the most Federal spirit. As no opposition has yet been made, and it is ready for the third reading, I expect it will soon be before the public.

"It has been thought advisable to give this subject a very solemn dress, and all the weight that could be derived from a single State. This idea will be pursued in the selection of characters to represent Virginia in the Federal Convention. You will infer our earnestness on this point from the

liberty which will be used, of placing your name at the head of them. How far this liberty may correspond with the ideas by which you ought to be governed, will be best decided where it must ultimately be decided. In every event, it will assist powerfully in marking the zeal of our legislature, and its opinion of the magnitude of the occasion."

On the 4th day of December, 1786, the two Houses, in pursuance of a motion made by Mr. Madison on the 30th of the preceding month, proceeded to the election, by joint ballot, of the commissioners to represent Virginia in the proposed convention. George Washington, Patrick Henry, Edmund Randolph (then governor of the State), John Blair, James Madison, George Mason, and George Wythe, in the order in which their names are here mentioned, were chosen. This list — including, with the foremost man of America and of the age placed at their head, those citizens of Virginia who were most distinguished by official position, long public services, and ripened wisdom and experience — sufficiently proclaimed to her sister States the solemn earnestness with which she now embarked in the cause of thorough constitutional reform, as well as her sense of the vastness, the dignity, and the arduousness of the labor.[1]

[1] There were two, and but two, of the veteran statesmen of Virginia, — her *clara et venerabilia nomina* of that day, — not included in the above list, — Edmund Pendleton and Richard Henry Lee. The pretermission of Mr. Pendleton was, doubtless, owing to the extremely delicate state of his health at the time, which gave rise to se-

The example of Virginia was promptly followed by New Jersey, Pennsylvania, North Carolina, and Delaware, in anticipation of any sanction given by Congress to the assembling of the convention; and two of those States, — Pennsylvania and Delaware, — in their acts for the appointment of commissioners, expressly based their proceedings, among other considerations, upon what had been done by Virginia and their desire to co-operate with her. None of the other States, with the exception of Georgia, provided for the appointment of deputies until Congress gave its formal sanction to the meeting of the convention; and some of these, as will hereafter appear, held back from other motives than the specious one of deference for the opinions or prerogatives of Congress.

As soon as the legislature of Virginia had thus pledged their co-operation in the great national work of an effective reform of the Federal system, their attention was turned to the exciting topic of the Mississippi. Vague rumors had reached them of the project agitated in Congress for surrendering to Spain, for a term of years, the navigation of that river. The delegates from the counties com-

rious apprehensions, not only with regard to his public labors, but his life. [See letter of Mr. Madison to Mr. Jefferson, of 4th December, 1786]. The omission of Mr. Lee's name is, perhaps, to be accounted for by doubts of his sympathy in the objects of the convention, as well as by a loss of public favor at the time, which was painfully exhibited in the recent competition for the office of governor, in which he received only twenty-two votes; while his kinsman, Colonel Bland, had twenty-six; and Mr. Randolph, the successful candidate, 77. [See Mr. Madison's letter to General Washington, of 8th November, 1786.]

posing what was then called the *district* of Kentucky (now the State of Kentucky) met, and drew up a memorial to the General Assembly, representing, in strong terms, the vital and indispensable necessity of the free use of the river to the prosperity of their constituents, of which they could not be deprived, without a flagrant violation, in their judgment, of the principles of the confederation, and praying its interposition to protect them "in the secure enjoyment of their privileges, with a due regard to the interests of the Union."[1]

We have already seen how much Mr. Madison's apprehensions had been excited as to the probable operation of this disturbing question on the temper of the legislature of Virginia, with regard to Federal measures, and especially the chief and paramount one of strengthening the government of the Confederacy. On his arrival in Richmond, he found his apprehensions fully verified. He wrote to General Washington, on the first day of November, 1786, — a few days after his arrival, — "The affair of the Mississippi is but imperfectly known. I find its influence on the Federal spirit will not be less than was apprehended. The Western members will not be long silent on the subject."

This spirit of dissatisfaction with the proceedings of Congress, relative to the Mississippi, he had the tact and good judgment to turn to account, after its first ebullitions had subsided, in favor of the great object of his solicitude. He represented,

[1] See Journal of House of Delegates of Virginia, 1786, p. 46.

and represented truly, to the advocates of the free navigation of the river, that the project for its temporary surrender had arisen from the weakness of the government, which, in its disordered and enervated condition, shrank from a bold assertion of the rights of the United States, lest such an assertion should be met by refusal, and leave to Congress no honorable alternative but war, which they were without any adequate means of sustaining. The best security, therefore, against the danger of improper concessions on the part of the government, he insisted, was to strengthen its hands by giving it the efficient control of the united resources of the country, in peace or in war, through the proposed change in the Federal system.

He also expressed his strong personal conviction, that the project before Congress would be finally abandoned; anticipating, as he did, that the Middle States would withdraw their support from it, and that the Eastern States themselves would ultimately discover that their own interests, as the *carriers* of the Confederacy, were deeply and especially concerned in maintaining the uninterrupted freedom of the river.

These representations, proceeding from a known friend and champion of the just claim of the United States to the common and unrestricted use of this great outlet to the ocean, had the desired effect upon the Western members, and secured their concurrence in the vote of the House, which, we have seen, was unanimously

given in favor of the act for the appointment of deputies to the Federal Convention. When their memorial relative to the Mississippi was subsequently taken into consideration, Mr. Madison came forward zealously to its support, and offered. in committee of the whole, a series of resolutions, embodying a manly assertion of the right of the United States, and an energetic protest against the project of its barter or surrender, which passed the House of Delegates, by a like unanimous vote, on the 29th of November, 1786.

After directing that a copy of the memorial be forthwith transmitted to the delegates of the State in Congress, and affirming the free navigation of the Mississippi to be "a bountiful gift of nature to the United States as proprietors of the territories watered by the said river and its eastern branches, and to be, moreover, secured to them by the late Revolution," the resolutions declare that "the Confederacy, having been formed on the broad basis of equal rights in every part thereof to the protection and guardianship of the whole, a sacrifice of the rights of any one part to the supposed or real interest of another part would be a flagrant violation of justice, a direct contravention of the end for which the Federal government was instituted, and an alarming innovation in the system of the Union."

The last resolution of the series is in the following emphatic words: —

"Resolved, therefore, as the opinion of this com-

mittee, that the delegates representing this State in Congress ought to be instructed, in the most decided terms, to oppose any attempt that may be made in Congress to barter or surrender to any nation whatever the right of the United States to the free and common use of the river Mississippi, and to protest against the same as a dishonorable departure from that comprehensive and benevolent policy which constitutes the vital principle of the Confederacy; as provoking the just resentments and reproaches of our Western brethren, whose essential rights and interests would be thereby sacrificed and sold; as destroying that confidence in the wisdom, justice, and liberality of the Federal councils, which is so necessary, at this crisis, to a proper enlargement of their authority; and, finally, as tending to undermine our repose, our prosperity, and our Union itself: and that the said delegates ought to be further instructed to urge the proper negotiations with Spain for obtaining her concurrence in such regulations, touching the mutual and common use of the said river, as may secure the permanent harmony and affection of the two nations, and such as the wise and generous policy of His Catholic Majesty will perceive to be no less due to the interests of his own subjects than to the just and friendly views of the United States."[1]

The history of these resolutions, with the deep

[1] See Journal of the House of Delegates of Virginia, session of 1786, pp. 66, 67.

feeling in which they had their origin, and the solemn importance attached to them, is detailed with great frankness in a letter from Mr. Madison to General Washington, of the 7th of December, 1786: —

"The affair of the Mississippi, which was brought before the Assembly in a long memorial from the Western members and some of the officers, has undergone a full consideration of both Houses. The resolutions printed in the newspapers were agreed to unanimously in the House of Delegates. In the Senate, I am told, the language was objected to by some members as too pointed. They certainly express, in substance, the decided sense of the country on the subject, and were offered in the place of some which went much farther, and which were, in other respects, exceptionable.

"I am entirely convinced, from what I observe here, that, unless the project of Congress can be reversed, the hopes of carrying this State into a proper Federal system will be demolished. Many of our most Federal leading men are extremely soured with what has already passed. Mr. Henry, who has been hitherto the champion of the Federal cause, has become a cold advocate, and, in the event of an actual sacrifice of the Mississippi by Congress, will unquestionably go over to the opposite side. I have a letter from Colonel Grayson, of late date, which tells me that nothing farther has been done in Congress; and one from Mr.

Abraham Clarke, of New Jersey, which informs me that he expected every day instructions from his legislature for reversing the vote given by the delegates of that State in favor of the project."

One of the questions which occupied the attention of the legislature of Virginia, during its present session, and which involved considerations of great moment to both the public prosperity and the public morals, was that of paper money. The pecuniary embarrassments of the country, which the extravagance, encouraged by the unrestricted introduction of foreign goods, had greatly increased, gave a dangerous popularity to this cheap but unscrupulous method of liquidating debts. One State after another yielded to the prevailing rage, until few had escaped the contagion.

We learn from a letter of Mr. Madison to Mr. Jefferson, of the 12th of August, 1786, that "Pennsylvania and North Carolina took the lead in this folly." South Carolina was next in order. Then followed New Jersey, New York, and Rhode Island. The legislature of Massachusetts had had the firmness to reject a proposition for a paper emission; but the neighboring States of Connecticut and New Hampshire, which had hitherto resisted, now exhibited symptoms of wavering. Maryland, where "the clamor for paper money," says Mr. Madison, "is universal," was convulsed by a desperate struggle to prevent the re-election of the former members of the Senate, which body alone had hitherto breasted the popular torrent.

"Whether," he adds, "Virginia is to remain exempt from the epidemic malady, will depend on the ensuing assembly. My hopes rest chiefly on the exertions of Colonel Mason, and the failure of the experiments elsewhere. That these must fail, is morally certain; for, besides the proofs of it already visible in some States, and the intrinsic defect of the paper in all, this fictitious money will rather feed than cure the spirit of extravagance, which sends away the coin to pay the unfavorable balance, and will therefore soon be carried to market to buy up coin for that purpose. From that moment, depreciation is inevitable."

As soon as the General Assembly of Virginia met, the demand for paper money, as Mr. Madison anticipated, was urged. A petition from the county of Brunswick was presented, setting forth that, "in consequence of the ruinous trade with Great Britain since the close of the war, the State has been drained of its specie; and it has become absolutely necessary, in order to afford a circulating medium for the internal business of the country, and to enable the people to discharge their taxes, to emit a sum of paper money, which shall be made a legal tender in all contracts entered into since the 19th of April, 1775." A similar petition was presented from the county of Campbell; and both were committed to the committee of the whole House on the state of the Commonwealth.

Colonel Mason, who had been elected a member of the Assembly, was not present, as Mr. Madison

hoped he would be, to oppose the authority of his great name and the weight of his talents to this pernicious delusion. But the absence of so able an auxiliary did not prevent Mr. Madison from coming forward in his own person, and raising the voice of reason, argument, and indignant remonstrance against a scheme fraught with so much evil and dishonor. He discussed the proposition in every possible aspect, — whether of currency and finance, of justice and enlightened policy, of constitutional law, of public virtue and morality, — and exhibited its odious and unreasonable features in all. The brief notes for his speech on this occasion, as we find them among his papers, are subjoined below, for the gratification of the reader's curiosity. The discussion terminated, happily, in the rejection of the petitions, by a vote of 85 against 17; and the adoption, by the same majority, of a resolution declaring, in terms of unusual energy, that "an emission of paper money would be unjust, impolitic, and destructive of public and private confidence, and of that virtue which is the basis of republican government."[1]

[1] See Journal of the House of Delegates of Virginia, session of 1786, pp. 15 and 16. — The following are the notes of Mr. Madison's speech against paper money, on the occasion referred to in the text: —

I. — Unequal to specie.
1. Being redeemable at a future day, and not bearing interest.
2. Illustrated by bank notes, stock in funds, paper of Spain issued during late war. — (See Neckar on Finance.)
3. Being of less *use* than specie, — which answers externally as well as internally, — must be of less *value*, which depends on the use.

II. — Unjust.
1. To creditors, if a legal tender.
2. To debtors, if not a legal tender,

This dangerous and odious measure being defeated, the General Assembly was not indisposed to provide some less objectionable facility, which, in the existing scarcity of specie, would enable the people to discharge their public dues without a ruinous sacrifice of property. Tobacco, the great staple of the State, had, in different periods of her history, been used as a sort of conventional currency; and it was now proposed to receive it, at

by increasing difficulty of getting specie. This it does by increasing extravagance and unfavorable balance of trade, and by destroying that confidence between man and man by which resources of one may be commanded by another.

3. Illustrated, first, by raising denomination of coin; secondly, by increasing alloy of coin, — brass made as silver by the Romans, according to Sallust; thirdly, by changing weights and measures; fourthly, by case of creditors within, who are debtors without, the State.

III. — Unconstitutional.

1. Affects rights of property as much as taking away equal value in land, — illustrated by case of land paid for down and to be conveyed in future, and a law permitting conveyance to be satisfied by conveying a part only, or other land of inferior value.

2. Affects property without trial by jury.

IV. — Anti-Federal. Right of regulating coin given to Congress for two reasons: —

1. For sake of uniformity.

2. To prevent fraud in States towards each other, or foreigners. Both these reasons hold equally good as to paper money.

V. — Unnecessary

1 Produce of country will bring in specie, if not laid out in superfluities.

2. Of paper, if necessary, enough already, in tobacco notes and public securities.

3. True mode of giving value to these, and bringing in specie, is to enforce justice and taxes.

VI. — Pernicious.

1. By fostering luxury, extends, instead of curing, scarcity of specie.

2. By disabling compliances with requisitions of Congress.

3. Sowing dissensions between States.

4. Destroying confidence between individuals.

5. Discouraging commerce.

6. Enriching collectors and sharpers.

7. Vitiating morals.

8. Reversing end of government, which is to reward best and punish worst.

9. Conspiring, with examples of other States, to disgrace republican government in the eyes of mankind.

Obj. Paper money good before the war.

Ans. 1. Not true in New England nor Virginia, where exchange rose 60 per cent, nor in Maryland. — See Franklin on paper money.

2. Confidence then — not now.

3. Principles of paper credit not then understood. Such would not then, nor now, succeed in Great Britain, or other countries of Europe.

fixed valuations, in payment of the taxes in arrear for the current year only. A bill was ordered to be brought in for that purpose, and was finally passed by a vote of 72 against 33 in the House of Delegates.

On this question a division of opinion took place among the most enlightened and conservative members of the House. The measure was exceptional, and a departure from Mr. Madison's general principles of legislation; but he thought it better to yield something to the peculiar circumstances and exigencies of the moment, than, by an inflexible denial of all relief, to incur the risk of a mischievous re-action, which it might be impossible either to limit or control. "To know when to yield in government," a renowned political authority has said,[1] "is, at least, as necessary as to know when to lose in trade,"— an exigency, in the practical concerns of life, which the wisest men in the conduct of their affairs are occasionally obliged to recognize and conform to.

Mr. Madison, in writing to General Washington, a few days after the passage of the act,[2] frankly avowed the reluctance with which he gave it his assent. "In admitting," said he, "tobacco for a commutable, we perhaps swerved a little from the line in which we set out. I acquiesced in the measure myself, as a prudential compliance with the clamors within doors and without, and as a probable means of obviating more hurtful experiments."

[1] Bolingbroke. [2] 7th December, 1786.

An occasion, however, soon occurred, which called, in his opinion, for the re-assertion and inflexible maintenance of his general maxims of legislative policy. The pernicious delays in the administration of justice, arising from the great accumulation of business in the General Court, had led, two years ago, to the passage of an act for the establishment of courts of assize on the plan of the *nisi prius* courts in England, which had not yet gone into operation. Mr. Madison, as we have seen,[1] was the chairman of the committee which prepared and brought in that act. Subsequent reflection, concurring with manifestations of the public judgment, induced him now to prefer the plan of district courts, invested with an original and independent jurisdiction, as furnishing a more commodious and efficient instrumentality for facilitating the despatch of judicial business.

He, accordingly, moved for leave to bring in a bill "to amend the act for the establishment of courts of assize," and was placed at the head of the committee, on which the duty of preparing it was devolved.[2] The bill reported from the committee substituted, as he proposed, district courts in the place of courts of assize; but, by a vote of a majority of the members of the committee, in opposition to his own opinion, it was clogged with a provision which subjected the recovery of debts to the condition of accepting payment in three annual instal-

[1] See ante, vol. i. pp. 587–590.

[2] See Journal of the House of Delegates of Virginia, session of 1786, p. 41 and 92.

ments. This provision Mr. Madison considered as an unwarrantable interference of the legislative authority with private contracts; and he determined to resist it to the last extremity, although it was proclaimed by its patrons to be the *sine quâ non* of their assent to any measure for expediting the administration of justice. In the same letter to his illustrious correspondent, General Washington, from which we have already given an extract, he declared that "the objections to it [the instalment clause] are so numerous and of such a nature, that I shall myself give up the bill rather than pay such a price for it." And in a letter to his father, a few days later, he recurred to the subject in these terms: —

"We have a bill depending for establishing district courts, differing from the assize in this respect: that the former will be vested with as complete jurisdiction within the district as the General Court exercises over the whole State. Unhappily, it is clogged with a clause installing all debts among ourselves, so as to make them payable in three annual portions. Such an interposition of the law in private contracts is not to be vindicated on any legislative principle within my knowledge, and seems obnoxious to the strongest objections which prevailed against paper money. How it will be relished, I cannot say, — the matter not having been yet taken into discussion. I think it probable it will miscarry, and that it will involve the district bill in its fate."

Mr. Madison's anticipations were fulfilled. When

the bill came under consideration in the House, a motion to strike out the clause respecting instalments was carried by a very large majority; but the success of the motion was immediately followed by the consequence which had been threatened of the rejection of the bill, though by a single vote:[1] and an act was, at the same time, passed for still farther suspending the operation of the law for the establishment of assize courts. The successive efforts made, during the session, to relax the obligation of contracts, public and private, on the one hand, and, on the other, to provide for a more expeditious administration of justice, with their respective results, are briefly and lucidly recapitulated in a letter which Mr. Madison addressed to General Washington on the 24th of December, 1786: —

"The original object was paper money. Petitions for graduating certificates succeeded. Next came instalments; and, lastly, a project for making property a tender for debts at four-fifths of its value. All these have been happily got rid of by very large majorities; but the positive efforts in favor of justice have been less successful. A plan for reforming the administration in this branch, accommodated more to the general opinion than the assize plan, got as far as the third reading, and was then lost by a single vote. The Senate would have passed it readily, and would even have added amendments of the right complexion. I fear it will be some time

[1] See Journal of the House of Delegates of Virginia, session of 1786, pp. 104–107.

before this necessary reform will again have a fair chance. Besides some other grounds of apprehension, it may well be supposed, that the bill, which is to be printed for the consideration of the public, will, instead of calling forth the sanction of the wise and virtuous, be a signal to interested men to redouble their efforts to get into the legislature."

These frequently renewed indications of a spirit at war with the faith of contracts and the precepts of justice in a State, which had hitherto firmly withstood the infection of surrounding evil examples, suggested monitory lessons that were not lost, as we shall see, on the provident mind of Mr. Madison, when he came to aid in the great work of devising and establishing the safeguards of a new constitution of government for the whole Union.

Among the acts which signalized this session of the legislature of Virginia, was the repeal of the law, passed two years before, for the incorporation of the Protestant Episcopal Church. Numerous petitions were presented, under the auspices mainly of the Presbyterian and Baptist denominations, demanding, not only the repeal of the act of incorporation, but also that the glebe lands and other property of the Episcopal Church should be considered as forfeited by the Revolution, and be sold, and the proceeds of the sale applied to public uses. On the other hand, an earnest remonstrance was presented by the convention of the Episcopal Church against both the repeal and the forfeiture; and, under the influence of that example, many private

citizens — members for the most part, it is to be presumed, of the Church — joined in petitions asking the maintenance of the existing law.

Other members of the Church, however, there were, and probably not a few, who, rising superior to sectarian views, and imbued with that spirit of independence which, we have seen, so remarkably characterized the laity of the Church in Virginia, believed the incorporating act to be a departure from the true principles of religious liberty, and desired, therefore, its repeal; but without any infringement of those rights of property which the Church held by the same tenure, and under the same shield of legal inviolability, that protected the property of individuals. We find among the papers of Mr. Madison a petition in his handwriting, and doubtless drawn by him, which embodied, in very pointed and forcible language, the sentiments of this portion of the members and friends of the Church. It declared against the act of incorporation, first, as recognizing "the power of the legislative body to interfere in matters of religion, which, we think, is not included in their jurisdiction;" then, as having been originally passed "on the petition of some of the clergy of the Protestant Episcopal Church, without any application from the other members of the Church, on whom the law was to operate;" and, finally, as conferring invidious and dangerous powers on the clergy, at the expense of the laity.[1]

These various petitions and counter-petitions were

[1] See this petition in Appendix B.

committed to a committee of the whole House, where they underwent an earnest and ample discussion. Resolutions were finally agreed to, declaring that the property held by all religious societies should be secured to them; that each society, independently of any legislative provision, possessed full power to regulate its own discipline and government; and that the act for the incorporation of the Protestant Episcopal Church ought to be repealed.[1] A bill, prepared in conformity to these principles, was finally passed,[2] but not without delays and embarrassments, arising from the peremptory and uncompromising views of those who contended for the confiscation and sale of the property of the Church, as well as the repeal of the act by which it had been incorporated. It sufficiently appears from the composition of the committee which brought in the bill, that some of the most enlightened friends of the Church in the legislature cordially co-operated in the latter object.[3] The struggle for the former and more extreme measure continued, for sixteen years longer, to agitate and disturb the Commonwealth. Its final success, even though it had involved no doubtful principle,[4] could hardly,

[1] Journal of the House of Delegates of Virginia, session of 1788, p. 87.

[2] Hen. Statutes, vol. XII. p. 366.

[3] The committee consisted of Messrs. Thruston, George Nicholas, John Page, Corbin, Zachariah Johnson, Archibald Stuart, Zane, Madison, Briggs, and Egglestone.

[4] The constitutionality of the act, passed in 1802, for the sale of the glebe lands, soon became the subject of forensic dispute. The question was carried up to the Supreme Court of Appeals of the State, on an appeal from a decision of Chancellor Wythe, affirming the constitutionality of the act. The

to a mind cherishing the blessings of social and religious peace, be deemed a compensation for that painful scene of controversy, and the embittered feeling it kept alive for so long a period, both before and after the termination of the contest.

The following brief account of the struggle of 1786 is given by Mr. Madison, in a letter to Mr. Jefferson, of the 15th of February, 1787: —

"The act incorporating the Protestant Episcopal Church excited the most pointed opposition from the other sects. They even pushed their attacks against the reservation of the glebe lands, &c., to

Court of Appeals then consisted of Judges Pendleton, President; Carrington, Lyons, Roane, and Fleming. Judge Pendleton, who was well known to deny the constitutionality of the act, and who had prepared an elaborate opinion to that effect, died suddenly the very night before the judgment of the court was to have been delivered. Judges Carrington and Lyons concurring with him, the decision of the Chancellor would have been reversed, and the act of the legislature in question been pronounced unconstitutional and void by the highest judicial tribunal of the State, but for the sudden death of its president.

The vacant seat in the court was supplied by the appointment of Judge Tucker, when the case was re-argued. Carrington and Lyons retained their opinion against the constitutionality of the act; Roane and Tucker were for sustaining it; and Fleming, who agreed with the two former, not sitting in the cause from some scruple of delicacy, the decision of the court below stood confirmed by the mere fact of the equal division of opinion among the judges who sat on the appeal. — (See case of Turpin, &c., vs. Locket, &c., reported in 6 Call, 113.) The same question was again brought before the Court of Appeals of Virginia, some thirty years later, when a unanimous judgment was pronounced in favor of the constitutionality of the act. — (Case of Selden, &c., vs. Overseers of Poor of Loudon county, XI. Leigh's Reports, pp. 132–136.) But, on the other hand, the Supreme Court of the United States, before whom the validity of the same act came in issue in a case within their jurisdiction, pronounced a precisely opposite judgment. See opinion of the court delivered by Judge Story, with the concurrence of Chief-Justice Marshall, in the Fairfax case.

the Church exclusively. The latter circumstance involved the legislature in some embarrassment. The result was the repeal of the act of incorporation, with a saving of the property."

In addition to his other labors during the present session of the legislature, Mr. Madison continued to devote himself earnestly and perseveringly to the task of procuring the enactment into permanent laws of the Commonwealth, of the bills which had been prepared at the expense of so much thought and toil by the learned committee of revisers of 1776. Of the one hundred and seventeen of these bills, which had been examined and reported by him from the committee of courts of justice the last session, sixty-one remained now to be acted on. On the 1st of November, 1786, these bills were taken up and again committed to the committee of the whole House; and it was made a standing order, as on the former occasion, that three days of each week should be set apart and appropriated to their consideration, in exclusion of the ordinary and current business of the legislature, until they were disposed of.

Several of these bills encountered violent opposition, and imposed upon the friends of the revisal — upon Mr. Madison, especially, as the recognized leader in it — a heavy weight of labor and responsibility. The bill for "proportioning crimes and punishments in cases heretofore capital," prepared by Mr. Jefferson, in the spirit of the Beccarian philosophy, to mitigate the sanguinary severity

of the ancient code, but proposing substitutes for the punishment of death, — in some instances of a fantastical, in others of a revolting, character, — continued to be, as it was during the last session of the legislature, the principal butt for the criticisms of the opposition.[1] Although it underwent many amendments, with the full concurrence of the friends of the new code, it was finally rejected by a single vote; a result which was owing, in no small degree, according to Mr. Madison, to the prevailing rage against horse-thieves, a class of malefactors that then most disturbed the peace and security of the Commonwealth, though now almost unheard of.[2]

Another measure proposed by the revisers, in advance of the circumstances of the country, if not of the spirit of the age, was a bill "to provide for the more general diffusion of knowledge," by the establishment of free schools in each hundred of every county, and of grammar schools in the respective districts, to be formed by the union of several counties to make a district. The difference of opinion with regard to this measure, as well as the determined opposition which, it was foreseen, would be made to the bill "concerning executions," by which lands were subjected to the

[1] See this curious relic of legislative history, with the accompanying notes of the author, in Jefferson's Writings [Rand. edit.], vol. i. pp. 120–133.

[2] The punishment for horse-stealing, proposed by Mr. Jefferson's bill, was three years' hard labor on the public works, with pecuniary reparation. By the existing law, it was death.

payment of debts under the ordinary process of law, led Mr. Madison, at length, to despair of completing the revision of the laws during the present session of the legislature. It was also apparent, that changes, made during their progress through the legislature, in several of the revised bills that had passed, would require corresponding alterations in those yet to be disposed of; and as many acts of current legislation, passed from time to time, since the revised bills were prepared, contained provisions not conforming to them, those acts, too, would need to be modified and revised, in order to bring them into harmony with the new code.

A supplemental revisal was, therefore, inevitable, before the new code could be finished, and put into operation; and this revisal, Mr. Madison justly thought, should be confided to learned and competent hands, — such as had executed the original work, — rather than be left to the hurried and imperfect action of the legislature. After having, then, "by unwearied exertions," during two successive sessions of the legislature, and "in opposition to the quibbles, chicaneries, perversions, and delays of lawyers and demi-lawyers," as Mr. Jefferson has said,[1] succeeded in procuring the adoption of the most important of the revised bills, — those that still form the basis of our republican legislation, — he brought in a bill "for completing the revision," by means of a new board of

[1] See the citation from his memoirs, ante, vol. I. pp. 175, 176.

revisers. The bill was promptly passed by both Houses; and under it, Judges Pendleton, Wythe, and Blair were elected to perform the duty of supplemental revisers.[1]

The following extract of a letter, written by Mr. Madison to Mr. Jefferson on the 4th of December, 1786, will give some idea of his share of the labor and responsibility connected with this important work: —

"The consideration of the revised code has been resumed and prosecuted pretty far towards its completion. I find, however, that it will be impossible, as well as unsafe, to give an ultimate *fiat* to the system at this session. The expedient I have in view is to provide for a supplemental revision by a committee, who shall accommodate the bills skipped over, and the subsequent laws, to such part of the code as has been adopted, — suspending the operation of the latter for one year longer. Such a work is rendered indispensable by the alterations made in some of the bills in their passage; by the change of circumstances, which calls for corresponding changes in sundry bills which have been laid by, and by the incoherence between the whole code and the laws in force of posterior date to the code.

"This business has consumed a great deal of the time of the two sessions, and has given infinite trouble to some of us. We have never been with-

[1] See Hen. Stat., 12. vol. pp. 409, 410; and Journal of House of Delegates of Virginia, session of 1786, pp. 124 and 141.

out opponents, who contest, at least, every innovation inch by inch. The bill proportioning crimes and punishments, on which we were wrecked last year, has, after undergoing a number of alterations, got through a committee of the whole; but it has not yet been reported to the House, where it will meet with the most vigorous attack. I think the chance is rather against its final passage in that branch of the Assembly; and, if it should not miscarry there, it will have another gauntlet to run through the Senate.

"The bill on the subject of education, which could not safely be brought into discussion at all last year, has undergone a pretty indulgent consideration this. In order to obviate the objection from the inability of the country to bear the expense, it was proposed that it should be passed into a law, but its operation be suspended for three or four years. Even in this form, however, there would be hazard in pushing it to a final question; and I begin to think it best to let it lie over for the supplemental revisers, who may perhaps be able to put it into some shape that will lessen the objection of expense."[1]

[1] To complete the history of this interesting subject and of Mr. Madison's connection with it, we subjoin an extract from a letter of later date (the 15th of February, 1787), addressed by him to Mr. Jefferson, in which, after mentioning the ultimate rejection of the bill for proportioning crimes and punishments by a single vote, he proceeds to say: —

"It was found impossible to get through the system at the late session, for several reasons: 1. The changes which have taken place, since its compilement, in our affairs and our laws, — particularly those relating to our courts, — called for

Of the merit and efficiency of Mr. Madison's services in carrying forward this arduous but noble work, we have already given, in the citation from Mr. Jefferson's memoirs, the emphatic testimony of one of the illustrious body of revisers themselves. What was thought of the value of those services by another of the same body, no less illustrious for his professional learning and wisdom, and even more competent, by his opportunities of personal observation, to judge, appears from the following simple but hearty tribute in a letter from Mr. Pen-

changes in some of the bills, which could not be made with safety by the legislature; 2. The pressure of other business, which, though of less importance in itself, yet was more interesting for the moment; 3. The alarm excited by an approach toward the Execution Bill, which subjects lands to the payment of debts. This bill could not have been carried, was too important to be lost, and even too difficult to be amended, without destroying its texture. Lastly, the danger of passing the Repealing Bill at the end of the code, before the operation of the various amendments, &c., made by the Assembly could be leisurely examined by competent judges.

"Under these circumstances, it was thought best to hand over the residue of the work to our successors; and, in order to have it made complete, Mr. Pendleton, Mr. Wythe, and Mr. Blair were appointed a committee to amend the unpassed bills, and also to prepare a supplemental revision of the laws which have been passed since the original work was executed. It became a critical question with the friends of the revisal, whether the parts of the revisal actually passed should be suspended in the mean time, or left to take their operation. The first plan was strongly recommended by the advantage of giving effect to the system at one and the same time, and by the inconveniency, arising from the latter, of leaving the old laws to a constructive repeal only. The latter, notwithstanding, was preferred, as putting the adopted bills out of the reach of the succeeding Assembly, which might possibly be unfriendly to the system altogether. There was good reason to suspect Mr. Henry, who will certainly be then a member. By suffering the bills which have passed to take effect in the mean time, it will be extremely difficult to get rid of them."

dleton to Mr. Madison, dated the 9th day of December, 1786: —

"I congratulate you on the near approach to the end of the revised code; since I am persuaded that nothing but your persevering assiduity would have ever accomplished that work at all, much less in so short a time. I can easily judge of your fatigue in it; and, had I as much power here as the Prussian monarch has (which, pardon me, I do not wish), I would order you a suitable reward. As it is, you have my thanks as an individual citizen."

There was one other question of deep interest to the honor and peace of the country, presented by the persevering refusal of Virginia and some of the other States to comply with the stipulation of the Treaty of Peace for the removal of all legal impediments to the recovery of debts, in the discussion of which Mr. Madison had hitherto taken a distinguished lead, and which he still had much at heart. But the ill success of his former efforts to preserve inviolate the sanctity of the public faith, together with the conviction that nothing effectual could be done until there had been an energetic remonstrance and appeal from Congress, indisposed him to renew the experiment with the present legislature. In a letter to a friend, of the 4th of December, 1786, he says: —

"I am unable to say what the present temper is on that subject, nothing having passed which could make trial of it. The repeated disappointments I have sustained in efforts in favor of the treaty

make me extremely averse to take the lead in the business again."

No other person moved in it, and the question was left to await the early and necessary action of Congress.

The fiscal embarrassments of the State, and her failure, in common with the rest of the States, to comply with the requisitions of Congress for the supply of the Federal treasury, formed another subject of painful solicitude to him, both as a legislator and a citizen. Attempts to repeal existing taxes were fortunately defeated, and several new ones were imposed. But as yet there was no sensible relief to the public necessities. In the letter referred to above, he presents the following gloomy picture of the finances of the State: —

"The fruits of the impolitic measures, taken at the last session, are bitterly tasted now. Our treasury is empty; no supplies have gone to the Federal treasury, and our internal embarrassments torment us exceedingly. The present Assembly have good dispositions on the subject; but some time must elapse before any of their arrangements can be productive."

This session of the Assembly terminated — with two memorable and fitting exceptions, one in the meridian, the other at the close, of his career — Mr. Madison's connection with the domestic councils of his native State. We have seen how faithfully and earnestly, and with what pre-eminent usefulness and ability, he had devoted himself, dur-

ing the three critical years that had elapsed since his retirement from Congress at the conclusion of the War of Independence, to the special service of the State, in the fostering and development of her trade and internal resources; the perfecting of her institutions, civil and religious; the triumphant assertion, in her policy, of the equal rights of all to the free exercise of conscience and opinion; the inculcation of the principles of justice and public morality, as well as freedom, in her legislation; the establishment of her just influence among the sister States of the Confederacy; and, finally, securing to her a proud and enviable lead in the great work of reconstructing the political system, by which they were linked together in the pursuit of one common and glorious destiny. He was now, as soon as the period of legal disqualification established by the articles of confederation expired, again transferred to the service of the Union, having been chosen by the legislature, during the session just ended, one of the delegates of the State in Congress. His duties, with the enlargement of their sphere, lost nothing either of their arduousness or their importance.

CHAPTER XXVI.

Civil Commotions in Massachusetts pave the way for Reform of Federal Constitution — Character and Origin of those Commotions — Measures taken by Congress to aid in their Suppression — Insurgents embodied under lead of an Ex-continental Officer, Daniel Shays — Insurrection finally subdued by State Authorities — Leaves a profound Uneasiness for the Stability of Government and Public Order — Marked Change in the Feeling and Policy of Massachusetts and the New-England States towards the Confederation — Deputies appointed by them to the proposed Convention at Philadelphia — Sanction of Congress given to the Convention — Spirit manifested by New York — Mr. Madison's Account of Parties in Congress with regard to change in Federal System — Existence of a Quasi-monarchical Party — Sagacious Reflection of Washington upon it — Mysterious State of Mr. Jay's Negotiation with Spain for Occlusion of Mississippi — Indignation in Western Country — Mr. Madison proposes Call for Information — Successive Motions made by him to arrest the Negotiation — Rapid Decline of Party in favor of the Project — Its ultimate Abandonment — Negotiations with Great Britain respecting Western Posts, detained contrary to Treaty of Peace — Prior Violations of the Treaty, on the part of America, alleged by the British Minister — Report of Mr. Jay, admitting infractions of the Treaty by several of the State Legislatures — Appeal of Congress to the Legislatures to revoke their Obnoxious Acts — Want of Authority in Congress to enforce Treaties, one of the most urgent Objects of Reform in the approaching Federal Convention.

Among the events which marked this period of the history of the United States, none, perhaps, exerted so controlling an influence upon the great question of the reconstruction of their political system as the civil commotions that occurred in the

State of Massachusetts, in the years 1786 and 1787, and affected, more or less, all the adjoining States. Those commotions were not of the character of mere popular outbreaks or tumults, proceeding from some specific grievance, real or imaginary, but were the result of a pervading revolutionary spirit, which spurned at the legal, constituted authorities of the State, and aimed to substitute in their stead the dictation of partial and irregular assemblies of the people. Conventions, as they were called, consisting of deputies thus chosen, were held in various parts of the State, and generally inaugurated their proceedings by proclaiming their rightful and paramount authority as representatives of the people, in their highest sovereign capacity.

The character of the movement, which soon convulsed the whole State, is best collected from the resolutions adopted by these popular conventions. The first of them was held in the county of Hampshire, in the western part of the State, in the month of August, 1786. Among the grievances set forth by that convention, the most prominent were the appropriation of a large part of the public taxes by the legislature to the discharge of continental obligations, especially the debt due to officers of the army; the fees and salaries allowed to civil officers; the organization of courts of justice, and costs of law-suits. With these griefs were freely mingled denunciations of lawyers, and a proscription of the Senate, as a clog on the popu-

lar branch of the legislature, and an excrescence that ought to be lopped from the Constitution. The pronunciamento of the malecontents wound up with a demand for an immediate issue of paper money.

The general pecuniary embarrassments of the people, arising from both private and public indebtedness, there can be no doubt, had much to do with the feeling of discontent and restlessness which broke out into these revolutionary demonstrations. But the same pecuniary embarrassments existed in other States, without producing any such eruption. Underlying the movement in Massachusetts was the spirit of a jealous and fierce democracy, impatient of the necessary burthens and restraints of organized government, as well as of those inequalities of external situation and fortune, which result inevitably from the freedom of individual enterprise, the rewards of public service, and the maintenance of social order. This spirit, largely infused into the original constitution of New-England society, had received no small impetus from some of its leading minds, who set the example of denouncing the frugal and hard-earned recompense, stipulated in favor of the war-worn champions of American Independence, as "inconsistent with republican equality, and calculated to exalt some citizens in wealth and grandeur, to the injury and oppression of others."[1]

[1] See the remonstrance of the legislature of Massachusetts, of the 11th July, 1783, signed by Samuel Adams, President of the Sen-

The creed and complaints of the malecontents being proclaimed through their conventions, they assembled at various points, and in considerable numbers, under arms; took possession of the court-houses; and, by force, expelled the judges and magistrates, and prevented them from holding their usual sessions. They threatened also the arsenal of the United States at Springfield, from which they hoped to obtain large additional supplies of arms.

A proclamation of the governor, denouncing these proceedings as seditious and treasonable, was unheeded. The legislature was convened. In their measures, they sought to combine a paternal spirit of lenity with a necessary and salutary vigor in upholding the authority of the laws. They passed acts for postponing the collection of the taxes, diminishing the costs of law-suits, and allowing debts to be discharged in property at valuation. Amnesty was also granted to the offenders on

ate, and Tristram Dalton, Speaker of the House of Representatives; and the answer given to it, on the 25th of September, 1783, by Mr. Madison, as chairman of a committee of Congress. In this case, the legislature of Massachusetts seemed to think themselves authorized to oppose and withhold the means of carrying into effect the grant of half-pay for life to the officers of the army or its equivalent, although the grant had been consummated according to all the forms of the Constitution, and with all the sanctions of the public faith, three years before. Mr. Madison, in pointing out the consequences of such a proceeding, admonished Massachusetts, that, "if she thus withheld her solid support from constitutional measures of the Confederacy, the result must be a dissolution of the Union;" and he added, as if with a prophetic spirit, "she must hold herself alone responsible for the anarchy and domestic confusion that may succeed." — See Journal of Congress, vol. IV. pp. 276, 277.

certain conditions. But, at the same time, new penalties were enacted against mobs and riotous assemblies; and the demand for paper money was rejected by a large majority.

The legislature adjourned early in November, hoping that, by the effect of these measures of mingled clemency and firmness, the seditious combination would soon be dissipated. But it acquired, on the contrary, new and more alarming proportions. It found a military leader in one who had been an officer of the Continental Army,—Daniel Shays,—whose name has thence had the unenviable distinction of giving its historical designation to this first parricidal attempt against the reign of liberty and order, founded by the Revolution. Under him the malecontents rallied with increased boldness and in augmented numbers.

These extraordinary events now began to attract the anxious attention of Congress. On the 29th of September they instructed the secretary of war, General Knox, to repair immediately to Springfield, and to take such measures as he might deem necessary for the protection and safety of the Federal magazine at that place. On his return, he addressed a communication to Congress, dated the 18th of October, containing a detailed account of the recent occurrences in Massachusetts. This communication was referred to a committee, to which had already been referred another from the war office, giving intelligence of hostile movements of the Indians in the Western country. The commit-

tee made their report on the Massachusetts disturbances, in *secret* session, on the 21st of October, presenting the following impressive summary of those transactions: —

"From the facts stated in the letter from the secretary of war and other authentic information, it appears that a dangerous insurrection has taken place in divers parts of the State of Massachusetts, which is rapidly extending its influence; that the insurgents have already, by force of arms, suppressed the administration of justice in several counties; that though the legislature of the said State is now in session, yet, from the circumstances attending it, it would undoubtedly defeat the object of the Federal interposition, should a formal application for the same be made; that, nevertheless, it appears to the committee that the aid of the Federal government is necessary to stop the progress of the insurgents; and that there is the greatest reason to believe, that, unless speedy and effectual measures shall be taken to defeat their designs, they will possess themselves of the arsenal at Springfield, subvert the government, and not only reduce that Commonwealth to a state of anarchy and confusion, but probably involve the United States in the calamities of a civil war."

The committee then recommended, that, "in order to be prepared to extend such aid to the State of Massachusetts as may be necessary to restore the government to the full exercise of its consti-

tutional authority, and to afford protection to the public stores deposited within that State, a body of troops be immediately raised under the authority of the United States;" but "as it is not expedient," they add, "that these causes should be publicly assigned for the raising of such troops, — especially as the other matters referred to the consideration of the committee afford sufficient ground to authorize the measure, — they have thought it proper, in a separate report on the intelligence received from the western country, to recommend an augmentation of the troops in the service of the United States."[1]

The separate report, here referred to, on the hostile demonstrations of the Indians in the West, was made the preceding day, and entered on the public journals of Congress. It proposed the raising of thirteen hundred and forty non-commissioned officers and privates for the term of three years, unless sooner discharged; the whole of them to be drawn, in allotted proportions, from the four Eastern States, with the exception of one hundred and fifty cavalry, of which one half was to be raised by Virginia, and the other half by Maryland. The report was unanimously agreed to in Congress; and, for the pay and support of the troops, a requisition was made on the States for five hundred and thirty thousand dollars in specie, to be paid into the Federal treasury on or before the 1st day of June, 1787, and a loan was directed

[1] See Secret Journals of Congress, vol. i. pp. 267–270.

to be immediately opened to obtain the amount on the credit of the requisition.[1]

Though the ostensible object of these preparations was defence against Indian hostilities, it came to be generally understood by the legislatures of the several States, that their real object was assistance to Massachusetts in repressing the revolt against the authority of her government and laws. Mr. Madison, who was a member of the legislature of Virginia at the time, states that the knowledge of this fact inspired the particular ardor with which that body voted, towards their quota of the requisition, a tax of sixpence per hogshead on tobacco, — a tax which, from its peculiar character of inequality, would not have been granted for any other object. The prompt action of Virginia in this instance arose from a strong sentiment of sympathy and fidelity to a sister State, silencing, for the time, the well-founded doubt whether, under a proper construction of the articles of confederation, Congress possessed any authority to interpose in the internal dissensions of a State.[2]

These auxiliary arrangements, ordered by Congress, gave confidence and vigor to the arm of the State authorities of Massachusetts, which proceeded, by resolute and systematic operations, to act in earnest upon the dangerous combination arrayed

[1] Public Journals of Congress, vol. IV. pp. 714, 715.

[2] See Madison Debates, &c., vol. II. pp. 584–586. It was stated by Mr. Pinckney of South Carolina in Congress, on the same occasion (19th February, 1787), that Virginia was the only State that had made even a partial compliance with the requisition of Congress for the object in question.

against them. It happened, fortunately, that a man of firmness and calm determination, of superior resources both of judgment and will, — Governor Bowdoin, — was at the head of the State administration. He called into the field, for immediate and active service, a body of from four to five thousand picked militia, and placed them under the command of General Lincoln; an officer whose large experience and reputation for vigor and moderation combined, acquired in the school of the Revolution, inspired universal confidence. Other and detached corps of militia, led by gallant though less experienced officers, were organized in various parts of the Commonwealth.

On the 25th of January, 1787, Shays made an attack on the arsenal at Springfield, and was repulsed, with the loss of several of his misguided followers. The main body of the insurgents then rallied at Petersham, where they were overtaken by the army of Lincoln after a forced march of thirty miles in the tempestuous gloom and biting cold of a northern February night. Thus surprised, they fled in various directions, leaving a hundred and fifty prisoners in the hands of General Lincoln. They never afterwards appeared in one collective body; but separate parties continued, for months, to defy the authority of the laws, or to threaten public order, in remote parts of the State, until they were successively reduced or expelled by detachments of military force sent against them. Many of their number sought refuge in

adjoining States, where they had numerous sympathizers, if not allies; and in some of those States they found protection at the hands of the public authority, which refused to give them up to the demand of the offended Commonwealth.

The General Court of Massachusetts, by which title the legislative assembly of that State was known, met again in February, 1787. Their first act was to affix its true character to the seditious movement, not yet entirely crushed, by formally proclaiming the existence of a *rebellion*.[1] They then decreed the civil and political disfranchisement of all who were or had been engaged in the rebellion, — a measure whose wisdom was much questioned on account of the large number of persons, of very various degrees of criminality, embraced within its operation. At the same time, indemnity was promised to such as should make their submission within a limited period; and the military commander, the President of the Senate, and the Speaker of the House of Representatives, were appointed commissioners to receive the submissions and grant the indemnities. About eight hundred persons sought and received the benefit of this act.

[1] The following language used by the General Court, on this occasion, strongly marks their sense of the gravity of the disorder: —

"We do hereby solemnly declare that a horrid and unnatural rebellion and war has been openly and traitorously raised and levied against this Commonwealth, and is still continued and now exists within the same, with design to subvert and overthrow the constitution and form of government which has been most solemnly agreed to and established by the citizens of this Commonwealth."—See Declaration made 4th February, 1787.

Although the great body of the insurgents had been dispersed, the legislature considered the government not yet safe without the protection of a military force; and fifteen hundred troops were raised for five months. Of the offenders prosecuted before the courts, some fifteen or twenty were convicted of treason, and received sentence of death; but they were all ultimately pardoned.

In reviewing these events, it is impossible not to be struck with the great extent to which the mass of the people of Massachusetts were, at this time, infected with the spirit of anarchy, and insubordination to legal and constitutional rule. The party of the insurgents was so strong, that Governor Bowdoin, who, by his unwavering firmness in upholding the standard of law and order, became particularly obnoxious to their resentments, lost his election; and Mr. John Hancock, who was supposed to have courted their favor by a more compliant, if not obsequious demeanor, was chosen by a large majority in the place of that virtuous and exemplary magistrate. A contemporary witness of the highest respectability has said, "There was, perhaps, a time when it was uncertain whether a majority of the people were not, at least, in a disposition not to oppose the progress of insurgency."[1]

The objects of the insurgents also, there is reason to believe, were even more radical and

[1] See statement of Judge Lowell, cited by Mr. Winthrop in his "Discourse on the Life and Services of James Bowdoin."

subversive than those which they avowed. General Knox, on his return from his official visit of observation to Massachusetts, and himself a citizen of that State, wrote to General Washington, "Their creed is, that the property of the United States has been protected from the confiscation of Britain by the joint exertions of all, and therefore ought to be the common property of all; and they are determined to annihilate all debts, public and private, and have agrarian laws, which are easily effected by the means of unfunded paper money, to be a tender in all cases whatever."[1] Mr. Madison, deriving his information through yet another and distinct channel, wrote to a correspondent about the same time: "The discontented, it is said, are as numerous as the friends of government, and more decided in their measures. Should they get uppermost, it is uncertain what may be the effect. They profess to aim only at a reform of their constitution, and of certain abuses in the public administration; but an abolition of debts, public and private, and a new division of property, are strongly suspected to be in contemplation."[2]

The dangerous character and rapid progress of this rebellion produced the most profound impression upon all reflecting minds throughout the country, and suggested new and admonitory arguments in favor of a prompt correction of the weakness

[1] See Letter of General Washington to Mr. Madison of 5th November, 1786, in Sparks's Washington, vol. IX. p. 207.

[2] See Letter of Mr. Madison to his father of 1st November, 1786.

and defects of the Federal system. To the mind of Washington, particularly, who saw the fabric of legal and constitutional freedom which he had, at so much cost, labored to rear for his country, now on the brink of premature dissolution, it brought the most painful and solemn reflections. From his numerous letters, written at this period to his friends both in the North and the South, we insert, as a specimen of the earnest and anxious spirit and of the eloquent patriotism and wisdom which pervaded them all, a brief extract from a letter he addressed to Mr. Madison on the 5th of November, 1786.

"How melancholy," he said, "is the reflection, that, in so short a time, we should have made such large strides towards fulfilling the predictions of our transatlantic foes! 'Leave them to themselves, and their government will soon dissolve.' Will not the wise and good strive hard to avert this evil? Or will their supineness suffer ignorance, and the arts of self-interested, designing, disaffected, and desperate characters, to involve this great country in wretchedness and contempt? What stronger evidence can be given of the want of energy in our government than these disorders? If there is not power in it to check them, what security has a man for life, liberty, or property? To you, I am sure, I need not add aught on this subject."

But nowhere was the lesson taught by these events more deeply felt, as there was nowhere

certainly greater occasion for its salutary though tardy inculcation, than in Massachusetts itself and the adjoining States.

The public men and the public bodies of New England had, from an early period, shown great jealousy of the Federal authority, as well as of their political connection with the other States. In the exaggeration of their democratic fears, they were jealous even of the army, by whose valor and patriotic sacrifices the common liberty was won. Congress they looked upon as a sort of extraneous diplomatic assembly, in which their delegates were not so much representatives of a common country, as agents commissioned to treat with the other States in a narrow spirit of special, if not exclusive, regard to the interests of their particular constituents.[1]

Even before the definitive treaty of peace which closed the struggle for national independence, in February, 1783, a delegate of Massachusetts threw

[1] An intelligent writer of Massachusetts has well described the character of the political opinions prevailing there at this time. "It is obvious," he says, "that the continental government was considered in the light of a foreign one. Indeed, the epithet was applied to it by one of the leaders in the Massachusetts councils. It was submitted to as a matter of necessity, and because such submission was the only practicable way of concentrating the energies of the other States. The sovereignty of the State was a favorite principle in the legislature of Massachusetts; and from that source New England chiefly derived its political opinions. . . . Although the distinction between a government voluntarily appointed at home and one imposed without consent from abroad was sufficiently obvious; yet any parting with the power of the State, any transfer of authority beyond its borders, was submitted to with reluctance." — See Austin's Life of Gerry, vol. I. pp. 407–415, and 495–499.

out from his seat in Congress the threat of a separate Confederacy of the Eastern States.[1] When, in 1785, under the recommendation of Governor Bowdoin, the legislature of the same State was induced to pass a resolution in favor of a general convention of the States for the purpose of enlarging the powers of Congress, the Delegates of the State, Messrs. Gerry, Holten, and King, declined to lay the resolution before Congress from professed apprehensions that such a convention would lead to "the conversion of our republican government into baleful aristocracies;" and, upon the receipt of their communication, the legislature retracted its resolution.

In the summer and autumn of 1786, as we have already seen, the dissatisfaction of the New-England States with the Federal Union had grown to such a height, that, according to the testimony of a distinguished contemporary actor having the best opportunities of information, a project was actually matured for their withdrawal, and formation into a separate Confederacy. But it was precisely at this epoch that the intestine troubles, of which we have rapidly traced the history, broke out in Massachusetts. The tone of feeling, which had hitherto prevailed among the public men of the State towards the Federal government, then underwent a sudden and total change. "Men of reflection, principle, and property," at once felt the necessity

[1] See Madison Debates, &c., vol. i. p. 357. — See also idem, pp. 428–430.

of adding to, instead of detracting from, its power and efficiency.[1] Mr. King, one of the delegates of the State who, in 1785, united with his colleagues in deprecating a general convention as fraught with danger to the cause of republican government, now wrote to one of those same colleagues, earnestly invoking his aid to effect the call of a convention, as essential to the public peace and safety, "Events," he said, "are hurrying us to a crisis; prudent and sagacious men should be ready to seize the most favorable circumstances to establish a more perfect and vigorous government."[2]

The same warning was deduced from these events, and the necessity of strengthening the Union, even for the defence of their State institutions, was most eloquently enforced, by the celebrated Fisher Ames, a year later, in the convention of Massachusetts.

"We approve," he said, "our own form of State government, and seem to think ourselves in safety under its protection. We talk as if there was no danger in deciding wrong. But, when the inundation comes, shall we stand on dry land?

[1] See communication of General Knox to General Washington, as referred to in a letter of the latter. — Sparks's Washington, vol. IX. pp. 226, 227.

[2] Letter of Rufus King to Elbridge Gerry, of 11th February, 1787. See Life of Gerry, vol. II. pp. 7 and 8. The biographer of Colonel Hamilton (History of American Republic, vol. III. p. 239), claims for that gentleman the merit of having "revolutionized the mind of Mr. King," with regard to the policy of strengthening the Federal government. Shays' Rebellion is, probably, much more justly entitled to the credit of the conversion.

The State government is a beautiful structure. It is situated, however, upon the naked beach. The Union is the dyke to fence out the flood. The dyke is broken and decayed; and if we do not repair it, when the next spring-tide comes, we shall be buried in one common destruction."[1]

The operation of reflections like these, enforced by the scenes of domestic anarchy and civil discord through which she was then passing, at last overcame the feelings of alienation from the Union under which Massachusetts, with her sister States of New England, had recently embraced the project of dismemberment; and, on the 21st of February, 1787, a resolution was passed by her legislature to send deputies to the proposed convention, though with a reservation that sufficiently indicated the still lingering influence of those jealousies of Federal power which had so long actuated her public councils.[2]

The time had now arrived for the action of Congress on the same subject. We have already had occasion to mention, that there were those who objected to the call of a convention as being a mode of proceeding not conformable to the origi-

[1] For a farther illustration of the influence of Shays' Rebellion in curing the original anti-federal tendencies of New England, and bringing Massachusetts into the support of the Union, see the simple and unsophisticated, but earnest and graphic, remarks of Mr. Smith in the convention of that State on the 25th January, 1788.

[2] See Report of Committee drawn by Samuel Adams, and agreed to by the Legislature of Massachusetts on the same day (21st February, 1787) that Congress finally gave its sanction to the call of the convention.

nal articles of the confederation, which declared that "no alteration shall at any time be made therein, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State." By this class of objectors, it was held to be a proper, if not indispensable, preliminary to the appointment of deputies by the States to the Convention, that Congress should in some manner give its sanction to the proceedings.

Six of the States, Virginia, New Jersey, Pennsylvania, North Carolina, Delaware, and Georgia, considering all mere technicalities as unsuitable to the supreme urgency of the crisis, and intent only on the importance of the object, had already, in response to the recommendation of the commissioners at Annapolis, appointed delegates to the convention proposed by them to be held at Philadelphia in the month of May. The recommendation of the Annapolis commissioners was, at an early day, referred to a special committee of Congress. It was afterwards committed to a grand committee, which made a report, "strongly recommending to the different legislatures to send forward delegates to meet the proposed convention on the second Monday in May next at the city of Philadelphia."

The subject, however, had not yet been disposed of by Congress, — owing mainly to causes connected with the political jealousies and dissensions of the time. It seems, particularly, that an un-

willingness existed, in some quarters, to recognize the convention which had been already set on foot, and for which appointments had been actually made by several of the States; and that a preference was felt, in lieu of it, to institute a new convention, setting aside what had already been done by several of the States, and involving the necessity of new appointments by them all.

The following extract from Mr. Madison's diary of the proceedings of Congress will furnish the reader a lucid account of the ultimate action of that body on a question simple and easy of solution in itself, but rendered intricate and embarrassing by the political considerations which were mingled with it. He had taken his seat, under his new election, on the 12th day of February, 1787; and, under the date of the 21st of that month, we find this entry: —

"The report of the convention at Annapolis, in September, 1786, had been long under the consideration of a committee of Congress for the last year, and was referred over to a grand committee of the present year. The latter committee, after considerable difficulty and discussion, agreed on a report, by a majority of one vote only, which was made a few days ago to Congress, and set down as the order for this day. The report coincided with the opinion held at Annapolis, that the confederation needed amendments, and that the proposed convention was the most eligible means of effecting them. The objections which seemed to prevail

against the recommendation of the convention by Congress were, with some, that it tended to weaken the Federal authority, by lending its sanction to an extra-constitutional mode of proceeding; with others, that the interposition of Congress would be considered by the jealous as betraying an ambitious wish to get power into their hands by any plan whatever that might present itself.

"Subsequent to the report, the delegates from New York received instructions from its legislature to move in Congress for a recommendation of a convention; and those from Massachusetts had, it appeared, received information which led them to suppose it was becoming the disposition of the legislature of that State to send deputies to the proposed convention, in case Congress should give their sanction to it. There was reason to believe, however, from the language of the instruction from New York, that her object was to obtain a *new* convention, under the sanction of Congress, rather than accede to the one on foot;[1] or perhaps, by dividing the plans of the States in their appointments, to frustrate all of them. The latter suspicion is, in some degree, countenanced by their refusal

[1] The resolution moved by the delegates of New York, in pursuance of their instructions, was in these words: "That it be recommended to the States composing the Union, that a convention of representatives from the said States respectively, be held at ——, on ——, for the purpose of revising the articles of confederation, and reporting to the United States in Congress assembled, and to the States respectively, such alterations and amendments of the said articles as the representatives met in such convention shall judge proper and necessary to render them adequate to the preservation and support of the Union."

of the impost, a few days before the instruction passed, and by their other marks of an unfederal disposition.

"The delegates from New York, in consequence of their instructions, made the motion on the journal to postpone the report of the committee, in order to substitute their own proposition. Those who voted against it, considered it as liable to the objection above mentioned. Some who voted for it, particularly Mr. Madison, considered it susceptible of amendment, when brought before Congress; and that, if Congress interposed in the matter at all, it would be well for them to do it at the instance of a State, rather than spontaneously.

"This motion being lost, Mr. Dane from Massachusetts, who was at bottom unfriendly to the plan of a convention, and had dissuaded his State from coming into it, brought forward a proposition in a different form, but liable to the same objection with that from New York. After some little discussion, it was agreed on all hands, except by Connecticut, who opposed the measure in every form, that the resolution should pass as it stands on the journal, — sanctioning the proceedings and appointments already made by the States, as well as recommending farther appointments from other States, but in such terms as do not point directly to the former appointments."[1]

[1] The proposition of the delegates from Massachusetts, as amended and finally agreed to by Congress, stands on the journals thus:—

"Whereas there is a provision in the articles of confederation for making alterations therein by the assent of Congress and of the legis-

There is, perhaps, nowhere to be found a more striking example of the errors into which history is often betrayed by the formal recitals and mere outside of official documents, than the resolution of Congress here referred to presents. The preamble of the resolution, it will be seen, by setting forth specially, for a purpose of policy explained by Mr. Madison, the fact of the instructions recently given by the legislature of New York, with only a general reference to the action of States who had preceded her in the same line, though in a different form, *seemed* to ascribe to that State a superior and distinguished zeal in the constitutional reform then in progress. Misled by this apparent but delusive interpretation, some writers of American history have most gratuitously exhibited New York as the leader in this great work of national regeneration.

But the undeniable truth is, that she was, of all the States, the most backward, at this period, in the manifestation of a national spirit. Even Rhode

latures of the several States; and whereas experience hath evinced that there are defects in the present Confederation, as a mean to remedy which several of the States, and particularly the State of New York, by express instructions to their delegates in Congress, have suggested a convention for the purposes expressed in the following resolution; and such convention appearing to be the most probable mean of establishing in these States a firm national government, — Resolved, that, in the opinion of Congress, it is expedient that, on the second Monday in May next, a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the articles of confederation, and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal constitution adequate to the exigencies of government and the preservation of the Union."

Island had at last complied with the application of Congress for the grant of a national impost, on which the very existence of the Confederacy was supposed to depend. New York alone, deaf to the earnest and repeated remonstrances of Congress, — which declared in emphatic terms that "the present critical and embarrassed condition of the finances of the United States is such as to require that the system of impost should be carried into immediate effect, and that New York is now the only State that has not adopted the same," — still persisted in refusing her compliance; and, on the 15th day of February, 1787, — only six days before the proceeding of Congress above mentioned, sanctioning the call of the convention, — she, for the third or fourth time, rejected the application for the impost by an inexorable majority of thirty-six to twenty-one, in the popular branch of her legislature.[1]

How far the resolution of instructions with regard to a general convention of the States, adopted the 20th of February, 1787, on the heels of her ungracious rejection of the impost, and carried by only a single vote in the senatorial branch of her legislature, may be viewed by the present times as effacing so long a course of actual delinquency in the fulfilment of her Federal duties, is an inquiry more curious, perhaps, than useful. That no such redeeming merit was found in it by the contemporaries

[1] See the significant and caustic proceedings of Congress with regard to the conduct of New York, in the Journals of the old Congress, vol. IV. pp. 669–671, 683–685, and 686–688.

of the transaction, and especially by Congress, and that practically it exerted no influence on the course of political events, is rendered sufficiently manifest by the fact, that, when a proposition in pursuance of it was submitted to Congress by the delegates of New York, it was decisively negatived by that body, — only three out of the eleven States present voting in favor of it.[1]

Mr. Madison has left upon record, in his diary of the proceedings of Congress, under the same date with the extract just given, a sketch of the state of parties in that body with regard to the great question of the day, which is of far too much interest, as connected with the history of the political institutions of the country, to be pretermitted here.

"The reserve of many of the members made it difficult," he says, "to decide their real wishes and expectations from the present crisis of our affairs. All agreed and owned that the Federal government, in its existing shape, was inefficient, and could not last. The members from the Southern and Middle States seemed generally anxious for some republican organization of the system, which should preserve the Union, and give due energy to the government of it. Mr. Bingham [of Pennsylvania] alone avowed his wishes, that the Confederacy might be divided into several distinct confederacies, — its great extent and various interests being incompatible with a single government.

[1] See Journals of old Congress, vol. IV. pp. 723 and 724.

"The Eastern members were suspected by some of leaning towards some anti-republican establishment (the effect of their late confusions), or of being less desirous or hopeful of preserving the unity of the empire. For the first time, the idea of separate confederacies had got into the newspapers. It appeared to-day under the Boston head. Whatever the views of the leading men in the Eastern States may be, it would seem that the great body of the people, particularly in Connecticut, are equally indisposed either to dissolve or divide the Confederacy, or to submit to any anti-republican innovations."

Much discredit has, from time to time, been thrown on the idea that there ever existed in any part of the United States, posterior to the Revolution, an opinion friendly to the establishment of monarchical government. An impartial survey, however, of contemporary evidence, renders it impossible to doubt that the effect of "the late confusions" in the Eastern States, referred to by Mr. Madison, had been to produce, in the minds of many leading men in that quarter of the Confederacy, a strong distrust of republican institutions.[1]

Not only the scenes of Shays' Rebellion in Mas-

[1] The testimony of a distinguished citizen of Massachusetts, given at the time, seems alone sufficient to justify the statement in the text. General Knox, in a confidential letter to General Washington of the 14th of January, 1788, giving an account of political parties in that Commonwealth, says: "Three-sevenths of the State, consisting of the merchants, lawyers, judges, clergy, late officers of the army, and men of large property, are for the most vigorous government. Perhaps many of them would have been still more pleased with the new constitution, had it been more analogous to the British constitution." — See Sparks's Washington, vol. IX. p. 311.

sachusetts, but the arbitrary and violent proceedings of the "paper-money party," then in the ascendant in Rhode Island, which had, in carrying out their favorite policy, enacted laws in contempt of every principle of public and private faith, deepened and aggravated this distrust. Instead of looking for a remedy for these admitted evils, in new checks and safeguards to be engrafted on a well-balanced republican system, minds of a certain cast seemed to turn with instinctive alienation and disgust from every modification of popular government, and saw guarantees of safety and order only in the traditions of a monarchical regime, like that to which they had been accustomed.

Mr. Madison, in a letter addressed to his friend Judge Pendleton at this period, speaks of the development of this sentiment, and expresses his apprehensions of its progressive growth and dangerous extension, unless an efficient corrective should be speedily devised for the evils of the existing system.

"If the approaching convention," he says, "should not agree on some remedy, I am persuaded that some very different arrangement will ensue. The late turbulent scenes in Massachusetts, and infamous ones in Rhode Island, have done inexpressible injury to the republican character in that part of the United States; and a propensity towards monarchy is said to have been produced by it in some leading minds. The bulk of the people will probably prefer the lesser evil of a partition of the Union into three

more practicable and energetic governments. . . . But, though this is a lesser evil, it is so great a one that I hope the danger of it will rouse all the real friends of the Revolution to exert themselves in favor of such an organization of the Confederacy as will perpetuate the Union, and redeem the honor of the republican name." [1]

Of the quasi-monarchical party, and of the solemn duties devolved by the crisis on those who still stood firm in the republican faith, Mr. Madison had written to General Washington, three days before, in the following terms: —

"I have not been here long enough to gather the general sentiments of leading characters touching our affairs and prospects. I am inclined to hope that they will be gradually concentred in the plan of a thorough reform of the existing system. Those who may lean towards a monarchical government, and who, I suspect, are swayed by very indigested ideas, will of course abandon an unattainable object, whenever a prospect opens of rendering the republican form competent to its purposes. Those who remain attached to the latter must perceive that it cannot be preserved at all,

[1] The letter bears date the 24th of February, 1787. In it Mr. Madison gives the following impressive summary of the imbecility and disorders which had then undermined the Confederacy: —

"No money is paid into the public treasury; no respect is paid to the Federal authority. Not a single State complies with the requisitions; some pass them over in silence, and some positively reject them. The payments, ever since the peace, have been decreasing, and of late fall short of even the pittance necessary for the civil list of the Confederacy. It is not possible that a government can last long under these circumstances."

under any modification which does not redress the ills experienced from our present establishments."

In replying to this communication of Mr. Madison, General Washington gave utterance to an observation of so much practical sagacity in regard to the apparently anomalous, but really natural and normal, political tendencies of the two opposite social systems existing in different portions of the Confederacy, — an observation which anticipated alike the demonstrations of experience, and the conclusions of a more profound speculative philosophy, — that it seems proper to record it here, with the communication to which it was an answer: —

"I am fully of opinion," said he, "that those who lean to a monarchical government have either not consulted the public mind, or that they live in a region which (the levelling principles in which they were bred being entirely eradicated) is much more productive of monarchical ideas than is the case in the Southern States, where, from the habitual distinctions which have always existed among the people, one would have expected the first generation and the most rapid growth of them."

Whether it be, that the original, inherent proclivity of an unqualified democracy is to personify itself in the government of a single man, as has been said by one who crowned his theory by successful practice,[1] or that its excesses lead, by a

[1] See ante, vol. I. p. 157, 158. The dictum of Louis Napoleon respecting the tendency of democracy to personify itself in one man, seems

natural re-actionary process, to the establishment of despotic authority as a refuge from anarchy and civil disorder, modern times have certainly added an impressive testimony to the truth, which the future history of the United States may yet farther confirm, that a highly democratic state of society is far more likely, than one tempered by natural aristocratical influences, to terminate in absolute monarchical rule.

We learn, from a brief sketch of his public career furnished by Mr. Madison to a friend,[1] that "his main object in returning to Congress at this time was to bring about, if possible, the cancelling of Mr. Jay's project for shutting the Mississippi." We have already seen what unhappy effects had been produced, by the agitation of this project, on the relations between the northern and southern portions of the Confederacy;[2] and it was doubted whether, under such circumstances, Mr. Jay would proceed in his inauspicious negotiation, with the precarious support of only seven States that had been obtained in favor of it. Mr. Madison, on his arrival in New York, found it exceedingly difficult to acquire any authentic information of the actual state of the negotiation. In writing to Governor Randolph, on the 11th of March, 1787, he says:—

sustained by the authority of Franklin, who declared, in the Federal Convention, that there is "a natural inclination" in the masses of mankind to kingly government, "as it gives more the appearance of equality among citizens; and that they like." — Madison Debates, &c., vol. II. p. 773.

[1] Mr. Paulding, in January, 1832.

[2] Ante, chap. XXIV. pp. 118–128.

"The negotiations with Spain are carried on, if they go on at all, entirely behind the curtain. The business has been put in such a form that it rests wholly with Jay how far he will proceed with Gardoqui, and how far he will communicate with Congress. The instructed States are, hence, under some embarrassment. They cannot demand information of right; they are unwilling, by asking it of favor, to risk a refusal; and they cannot resort to the present thin Congress [eight States only being in attendance] with any hope of success. Should Congress become pretty full, and Pennsylvania follow North Carolina, Virginia, and New Jersey in giving instructions, the case may be altered."

Mr. Madison was led to infer, from an interview he had with Gardoqui, the Spanish minister, two days after the date of this letter to Governor Randolph, that the negotiation had been arrested.[1] An occasion, however, soon presented itself, which finally put aside the veil of mystery that had hitherto covered the transaction. In the high excitement which rumors of a proposal for the occlusion of the Mississippi naturally created in the Western country, an unauthorized seizure of Spanish goods had taken place at Vincennes, then within the territorial limits and jurisdiction of Virginia; and, in the absence of the legislature of the State, the executive council took prompt and vigorous measures for the repression of such outrages. These

[1] See Madison Debates and Correspondence, vol. II. pp. 590 and 623.

proceedings were laid before Congress; and, with a memorial presented from North Carolina in relation to the seizure and confiscation of the goods of a citizen of that State at Natchez, were referred to the secretary for foreign affairs. The reference being objected to by Mr. Rufus King, one of the delegates of the State of Massachusetts, brought on a discussion respecting the general question of the navigation of the Mississippi, in the course of which Mr. Madison suggested the propriety of the secretary laying before Congress the actual state of his negotiation with the Spanish minister. A motion to that effect was immediately made by Mr. Pierce, of Georgia; and, though postponed for a day or two, at the instance of Mr. King, was afterwards adopted without any avowed dissent.[1]

Among the papers from Virginia and North Carolina referred to the secretary for foreign affairs, were several evincing the stern and indignant feelings awakened in the minds of the inhabitants of the Western country by the pending negotiation with Spain. From one of these — a letter said to be addressed by a gentleman at the Falls of the Ohio, to his friend in New England — we insert the following passages, of a native and robust eloquence, bravely expostulating against threatened injustice and wrong: —

"Politics, which a few months ago were hardly thought of, are now sounded aloud in this part of the world, and discussed by almost every person.

[1] Madison Debates and Correspondence, vol. II. pp. 598, 603, 604, and 637.

The late commercial treaty with Spain, in shutting up, as it is said, the navigation of the Mississippi for the term of twenty-five years, has given this Western country a universal shock, and struck its inhabitants with amazement. Our foundation is affected; it is, therefore, necessary that every individual exert himself to apply a remedy. To sell us, and make us vassals to the merciless Spaniards, is a grievance not to be borne. . . .

"Do you think to prevent the emigration from a barren country, loaded with taxes and impoverished with debt, to the most luxuriant and fertile soil in the world? Vain is the thought, and presumptuous the supposition. You may as well endeavor to prevent the fishes from gathering on a bank in the sea which affords them plenty of nourishment. Shall the best and largest part of the United States be uncultivated, — a nest for savages and beasts of prey? Certainly not. Providence has designed it for some nobler purposes. This is convincing to every one who beholds the many advantages and pleasing prospects of this country.

"Here is a soil richer to appearance than can possibly be made by art. Large plains and meadows, without the labor of hands sufficient to support millions of cattle, summer and winter; cane, which is also a fine nourishment for them, without bounds. The spontaneous production of this country surpasses your imagination. Consequently, I see nothing to prevent our herds being as numerous here, in time, as they are in the kingdom of

Mexico. Our lands, to the northward of the Ohio, for the produce of wheat, &c., will, I think, vie with the island of Sicily.

"Shall all this country now be cultivated [if cultivated at all] entirely for the use of the Spaniards? Shall we be their bondmen, as the children of Israel were to the Egyptians? Shall one part of the United States be slaves, while the other is free? Human nature shudders at the thought; and freemen will despise those who could be so mean as to even contemplate on so vile a subject. . . .

"We have taken all the goods belonging to the Spanish merchants of post Vincennes and the Illinois, and are determined they shall not trade up the river, if they will not let us trade down it. Preparations are now making here, if necessary, to drive the Spaniards from their settlements at the mouth of the Mississippi. In case we are not countenanced and succored by the United States, if we need it, our allegiance will be thrown off, and some other power applied to. Great Britain stands ready, with open arms, to receive and support us. They have already offered to open their resources for our supplies. When once re-united to them, 'farewell, a long farewell, to all your boasted greatness.' The province of Canada, and the inhabitants of these waters, of themselves, will in time be able to conquer you. You are as ignorant of this country as Great Britain was of America. These hints, if rightly improved, may

be of service; if not, blame yourselves for the neglect."

On the 11th of April, 1787, Mr. Jay made his report to Congress on the state of the negotiation between him and the Spanish minister, and, on the following day, his report on the papers referred to him from Virginia and North Carolina. From the former, it appeared that he considered himself sufficiently empowered by the vote of seven States to proceed with the negotiation, and that, after various conferences and discussions, he had adjusted with Mr. Gardoqui the form of an article for the non-user of the river Mississippi, by the inhabitants of the United States, during the period of the projected treaty; but that he had been cautious not to commit Congress to the acceptance of what he proposed.

His report on the papers from Virginia and North Carolina showed how much he was embarrassed by the discontents in the Western country, the existence and grave character of which those papers disclosed; and he expressed his apprehension that "the period is not distant when the United States must decide either to wage war with Spain, or settle all differences with her by treaty on the best terms in their power." There being no reputable middle way, in his opinion, between peace and war, "it will be expedient," he said, in conclusion, "to prepare, without delay, for the one or the other; for circumstances, which call for decision, seem daily to accumulate."[1]

[1] See Secret Journals of Congress, vol. IV. pp. 328 and 329.

Both of these reports were read in Congress on the 13th of April, when Mr. Madison moved to refer them to a committee. This motion, which was opposed by the friends of the negotiation, showed significantly, by the division upon it, the rapid decline of the party in favor of Mr. Jay's project. Eight States were present, of which five voted for the motion, and three only — Massachusetts, New York, and Connecticut — against it. The motion, nevertheless, failed, as the articles of confederation required a majority, at least, of the whole number of States belonging to the Union to carry any question whatever.

Of the seven States that had originally given their sanction to the negotiation, two of the Middle States — New Jersey, by positive instructions, and Pennsylvania, by change in her representation — were now arrayed against it, and made common cause with the South. The question just taken showed also that one of the Eastern States — Rhode Island — had abandoned the Northern alliance, which she did from the conviction that a leading consideration for shutting the Mississippi, with several of the States who were parties to that alliance, was the better to dispose of their public lands, by retarding the settlement of the West, and thus getting rid of the competition in the market of its more fertile territory.[1]

In the critical as well as awkward state of things revealed by Mr. Jay's reports, Mr. Madison

[1] See Madison Debates and Correspondence, vol. II. pp. 629 and 642.

was of opinion that the best mode of extricating the country from the dilemma in which it was placed was to send Mr. Jefferson, then minister at Paris, to Spain, with such instructions as would enable him to maintain the rights of the United States, without compromising unnecessarily the harmony and mutual interests of the two nations. He submitted a proposition for that purpose, on the 18th of April, 1787.[1]

In that spirit of jealousy which seemed to actuate all the proceedings of the friends of Mr. Jay's negotiation Mr. King of Massachusetts moved the reference of this proposition to the secretary for foreign affairs, who, two days afterwards, made a report adverse to its adoption, and indicating no small degree of personal feeling on the subject.[2] On the 23rd of April, when this report was taken up for consideration, another of the delegates of Massachusetts, Mr. Gorham, avowed the opinion that the shutting of the Mississippi would be advantageous to the *Atlantic* States, and declared his wish to see it closed. The illiberality of the sectional policy, thus avowed, roused Mr. Madison to animadvert upon it with unwonted severity, "contrasting it with the principles of the Revolution and the language of American patriots."[3]

Every conciliatory expedient for disembarrassing the question of the navigation of the Mississippi

[1] Secret Journals, vol. IV. p. 337.

[2] Secret Journals, vol. IV. pp. 609.

[3] Madison Debates, vol. II. p. 338–342.

from the antecedent and recorded vote of seven States in favor of its barter having been thus ungraciously declined, Mr. Madison determined to attack directly the constitutional validity of that vote, and, on the 25th of April, submitted the following resolution: —

"Whereas it appears by the report of the secretary for the department of foreign affairs, made on the 11th instant, that, in consequence of a vote entered into by seven States on the 29th of August last, he has proceeded to adjust with Mr. Gardoqui an article for suspending the right of the United States to the common use of the river Mississippi below their southern boundary; and whereas it is considered that the said vote of seven States, having passed in a case in which the assent of nine States is required by the articles of confederation, is not valid for the purpose intended by it, and that any farther negotiations, in pursuance of the same, may eventually expose the United States to great embarrassments with Spain, as well as excite great discontents and difficulties among themselves, —

"Resolved, therefore, that the secretary for the said department be informed, that it is the opinion of Congress that the said vote of seven States ought not to be regarded as authorizing any suspension of the use of the river Mississippi by the United States, and that any expectations thereof, which may have been conceived on the part of Spain, ought to be repressed."

This proposition was met by a parliamentary device to bar its consideration, — a proceeding, on the part of the advocates of the treaty, which evinced alike the consciousness of their weakness, and their determination to hold fast whatever mere technical advantage they had got by a former vote of the House.[1] But it was now apparent that the project had received a mortal wound from the discussions it had undergone, from the public condemnation it provoked, and from the defection of its own friends, which it could not long survive; and that its ultimate doom was inevitable.

No farther vote was taken upon it before the 2d day of May, when Mr. Madison left his seat in Congress to repair to Philadelphia, and enter upon his important duties as a member of the convention which was soon to assemble there for the revision of the Constitution. He closed his diary of the proceedings of Congress with this memorandum: "It was considered, on the whole, that the project for shutting the Mississippi *was at an end;* a point deemed of great importance in reference to the approaching convention for introducing a change in the Federal government, and to an objection to an increase of its powers, foreseen from the jealousy which had been excited by that project."[2]

[1] See Madison Debates and Correspondence, vol. II. pp. 609–614.

[2] The opinion here expressed by Mr. Madison turned out to be correct. No farther proceeding in the Congress of the confederation took place on the subject of the Mississippi, until near eighteen months after this time, when a resolution was adopted, *nemine contradicente*, affirming the clear and

There was another proceeding of this Congress, which, from the striking illustration it furnished of the necessity of a radical change in the existing system of the confederation, as well as from its intrinsic importance, deserves to be specially noticed. More than three years had now elapsed since the ratification of the definitive treaty of peace; and yet British garrisons were still in possession of various posts, and their dependencies, within the acknowledged limits of the United States along the northern and north-western frontier, encouraging, by their presence, the unquiet and hostile disposition of the Indian tribes, and impeding the settlement of that extensive and fertile portion of the national domain. This continued occupation was in violation of an express stipulation of the treaty of peace, by which His Britannic Majesty was bound "to withdraw, with all convenient speed, all his armies, garrisons, and fleets from the United States, and from every port, place, and harbor within the same."

The American minister at London, on the 30th of November, 1785, presented a memorial to the British government, demanding the immediate evacuation of these posts, in pursuance of the treaty. The British secretary of State, in his answer of the 28th of February, 1786, admitted unreservedly the obligation imposed upon his gov-

indisputable right of the United States, and turning the question over to the new government. — See Journals of old Congress, secret and public, 16th September 1788.

ernment by the treaty of peace, but alleged the non-fulfilment of other articles of the treaty on the part of the United States, particularly in the refusal of several of the States to repeal their laws opposing impediments to the recovery of British debts, as justifying the default which had taken place on the side of Great Britain.

"The engagements entered into by treaty," he said, "ought to be mutual, and equally binding on the respective contracting parties. It would, therefore, be the height of folly, as well as injustice, to suppose one party alone obliged to a strict observance of the public faith, while the other might remain free to deviate from its own engagements as often as convenience might render such deviation necessary, though at the expense of its own national credit and importance." He concluded with the assurance, that, "whenever America shall manifest a real determination to fulfil her part of the treaty, Great Britain will not hesitate to prove her sincerity to co-operate in whatever points depend on her for carrying every article of it into real and complete effect."

This correspondence was referred by Congress to the secretary for foreign affairs, who, on the 13th of October, 1786, made an able and elaborate report on the numerous important questions presented by it. He reviewed minutely the various acts of the State legislatures, which were complained of by the British government as being infractions of the treaty of peace on the part of the United States;

and came to the conclusion, that, while some of those acts, fairly considered, were not violations of the terms of the treaty, others were clearly and undoubtedly so. He also affirmed that several of those infractions by the State legislatures — as in the instances of New York, Pennsylvania, and South Carolina — were prior in point of time to the first violation committed by the British government, which was on the 25th of November, 1783, when, in withdrawing their army from the city of New York, they carried away with them, contrary to the seventh article of the treaty, the fugitive or captured negroes in their possession. "Under such circumstances," said Mr. Jay, in closing his report to Congress, "it is not a matter of surprise to your secretary that the posts are detained; nor, in his opinion, would Britain be to blame in continuing to hold them, until America shall cease to impede her enjoying every essential right secured to her, and her people and adherents, by the treaty."[1]

The inexecution of the treaty of peace being thus traced, not to the default of Congress in any thing depending upon its own volition, but to acts of the State legislatures, which Congress had no sufficient power to control, the question for con-

[1] See the whole report in Secret Journals of Congress, vol. IV. pp. 186–287. Mr. Jefferson, as secretary of State after the adoption of the Constitution, in his discussion of these questions with the British Minister, Mr. Hammond, presented and maintained very different views on several of them from those here presented by Mr. Jay. — See post, vol. III. chap. XL.

sideration was, what that body, representing the United States collectively as one of the high contracting parties, could or should do to remove these embarrassments. Its interposition, under the system of the confederation as it then stood, could be didactic only. The report of the secretary for foreign affairs was taken up for consideration on the 20th of March, 1787, and continued to be the subject of deliberation in Congress on that and the following day.

Three resolutions were unanimously agreed to, declaring in effect, that, a treaty being once concluded by Congress according to the forms of the Constitution, the legislatures of the several States have no right to pass any act for explaining or interpreting its meaning, or for limiting, restraining, or counteracting its operation; that all such acts as may have been passed in any of the States, repugnant to the treaty of peace, ought to be forthwith repealed; and that it be recommended to the several States to make such repeal in general terms by declaring all acts whatsoever that may be repugnant to the treaty to be no longer in existence, leaving it to the courts to determine, in each particular case brought before and properly cognizable by them, what acts are, or are not, in conflict with the treaty. The secretary for foreign affairs was instructed to prepare a circular letter from Congress to the States to accompany the communication of these resolutions to the respective State governments; and, on the 13th of April, 1787, the

forcible and impressive appeal, drawn by him, was unanimously approved in Congress, and signed by the president of that body, to be immediately transmitted to the States.

Mr. Madison, in writing to Governor Randolph two days later, thus notices the proceedings of Congress on this grave and delicate occasion: —

"The effect of the interposition of Congress in favor of the treaty, at this crisis, was foreseen by us. I would myself have preferred a little procrastination on the subject. But the manifest and undeniable propriety of the thing itself, with the chance that the legislature here [New York], which will adjourn, in a little time, until next winter, and which is one of the principal transgressors, may set an immediate example of reformation, overruled the argument for delay.[1]

"The difficulties which, as you suggest, may be left behind by a mere repeal of all existing impediments, will be probably found of a very serious nature to British creditors. If no other advantage shall be taken of them by the State than the making the assent of the creditors to the plan of instalments the condition of such farther provisions as may not come within the treaty, I do not know that the existence of these difficulties ought to be matter of regret. In every view, Congress seems to have taken the most proper course for maintaining

[1] The legislature of New York adjourned a few days afterwards, without any action on the subject. — See Madison Debates and Correspondence, vol. II. p. 639.

the national character; and if any deviations, in particular States, should be required by peculiar circumstances, it will be better that they should be charged on such States than on the United States."

No candid person will deny, that, in these proceedings, Congress did every thing which, under the defective organization of the confederation, it was possible for it to do, to maintain the national character and preserve the public faith. But it must be apparent, likewise, to all, that a mere *recommendation* of Congress, however persuasively enforced, to the legislatures of the States to repeal acts of State legislation repugnant to the national engagements, was, at best, but a feeble and precarious resource of government. One of the most urgent, as well as difficult, of the problems to be solved by the approaching convention for the amendment of the articles of confederation, was to devise a direct, constitutional control over the capricious or unjust legislation of the States, in cases involving the peace, honor, and interests of the Union, on some plan which should be effectual, and, at the same time, consistent with the republican genius of the government.

CHAPTER XXVII.

Preparations of Mr. Madison for Labors of Federal Convention — Paper compiled by him on Ancient and Modern Confederacies — Important Paper on "Vices of Political System of United States" — Leading Principles of his Political Creed — Rights of the Minority — Essential Safeguards in Republican Government — Abuses of the State Legislatures — Testimony, on the Subject, of Mr. Jefferson and Colonel Mason — Colleagues of Mr. Madison in the Convention — Correspondence with General Washington on Question of his Acceptance — Opinions of Washington with regard to Defects of Confederation — Mr. Henry declines his Appointment — Probable Reasons of his Refusal — Character and Opinions of Governor Randolph — Judge Blair, his Character and Opinions — Colonel Mason's Acceptance, and General Sentiments towards Object of the Convention — Mr. Wythe, Sketch of his Character and Career — Dr. M'Clurg appointed in place of Mr. Henry.

It had long been evident to reflecting minds, that a confederation so loosely constituted as that of the United States, leaving the measures of the central authority to depend for their execution on the voluntary co-operation of the State administrations, could not, for any considerable period, answer the purposes of an effective government. As soon as the return of peace put an end to those high, constraining motives to union and patriotic sacrifice which the struggle for independence and national existence produced, the inherent imbe-

cility and fatal defects of the system became more and more apparent.

Mr. Madison, whose personal experience in the operations of the government enabled him, at an early day, to foresee the crisis that had now arrived, had, from the moment of his leaving Congress at the close of the Revolution, turned his thoughts most anxiously to an improved political organization, adequate to the wants, and corresponding to the destinies, of a great and growing community of States. His studies, as we have seen, during the intervals of leisure from active public duties, had been directed mainly to that object. Having been recently chosen a deputy to the convention, which was to be charged with the important task of revising the articles of confederation, and digesting such alterations in the system as would render it "adequate to the exigencies of government and the preservation of the Union," he began now to gather up and arrange the fruits of his long and various researches in the history and science of government, — of confederate government especially, — in order to be better prepared for the performance of his duties in that assembly.

Many of these notes still remain among his manuscripts; and, besides the interest which attaches to every trace of the operations of a mind like Mr. Madison's, some of them are intrinsically of the highest value. He prepared, with great care, a paper on the most celebrated confederacies,

ancient and modern, — the Lycian, Achæan, and Amphictyonic among the former, and the Belgic, Helvetic, and Germanic among the latter, — in which he analyzed minutely the peculiar structure, and pointed out the characteristic defects, of each. The copious citation of authorities — the most of them in foreign languages — evinced the diligent use he had made of the valuable accessions to his library, obtained through the friendly offices of Mr. Jefferson at Paris, as well as his early familiarity with the stores of classical antiquity. A copy of this paper, omitting the citation of authorities and extracts in foreign languages, was made by General Washington, — between whom and Mr. Madison there existed, at the time, a constant and unreserved intercommunication of views on the critical condition of the Confederacy; and being found, after his death, among his papers, and in his handwriting, it has been published in the collection of the writings of Washington.[1] In the Appendix to this volume, it will be found, in the precise form in which it was prepared by Mr. Madison, and as it still exists in his handwriting on his files.[2]

Among the manuscripts of the same period is a collection of additional "Memoranda," in which Mr. Madison explored a yet wider field of research, drawing instructive illustrations from the history of

[1] See Sparks's Washington, vol. IX. pp. 521–538; also idem, p. 249.

[2] The contents of the paper here referred to were, soon after, worked up by Mr. Madison, with admirable judgment and effect, in the 18th, 19th, and 20th Nos. of the "Federalist."

the Anglo-Saxon Heptarchy, the early relations of England and Wales, the ultimate union of England and Scotland, the eventful vicissitudes in the connection of Great Britain and Ireland, the remoter union of Colmar between the three Scandinavian States of the north of Europe, and the various fortunes of the celebrated and once prosperous Hanseatic League; to which is added a minute analysis of the interior political constitutions of the leading ancient republics, with other rare and valuable matter skilfully condensed. The chief drift of these memoranda seems to have been to exhibit the inherent defectiveness of all mere confederacies, acting upon States instead of individuals; the danger of collisions and wars among neighboring States, having certain interests in common, without being united by one and the same government; and the weak points to be specially guarded in the framing of republican constitutions. This paper we have thought it proper also to subjoin in the Appendix, not merely as a sample of the uncommon breadth and accuracy of Mr. Madison's political studies, but for its intrinsic value and pregnant suggestiveness.

But by far the most important of these manuscripts is a paper in which Mr. Madison recorded, at the time, the results of his own personal observation and reflections on the then existing political system of the United States, as he had seen it in actual operation for ten years. It bears date April, 1787, and is entitled, in his own handwriting,

"Vices of the Political System of the United States." This paper is a comprehensive panorama of the political condition of the country in all its relations, State and Federal, as contemplated from a serene and elevated point of view, and drawn by the hand of a practical as well as philosophical statesman. The vices of the political system of the United States are presented by him under three aspects: first, the conduct of the States in their relations with the general government and with each other; secondly, the intrinsic defects in the organization of the general government itself; and, thirdly, the infirmities and diseases of the interior legislation of the States within their own limits.

Under the first aspect, he exhibits the habitual failure of the States to comply with the constitutional requisitions of Congress; the positive encroachments made by them on the Federal authority; their disregard and violations of treaties with foreign powers entered into by Congress, involving departures from the law of nations in other respects; and the trespasses committed by them on the rights of each other. Each of these allegations is developed in an appropriate commentary, and sustained by facts and examples in support of their correctness.

Under the second aspect, he adverts to the want of authority in Congress to regulate matters of common concern, like that of commerce, in which the conflicting regulations of the different States were destructive of the national harmony and inter-

est, as well as of the mutual prosperity of the States themselves; the want of an express power of the general government to guarantee to the several States the security of their laws and constitutions against internal violence; the absence of any sanction or power to enforce obedience to the laws of the Confederacy within the acknowledged sphere of its constitutional action; and the omission of a provision for obtaining a ratification of the compact by the *people* instead of the legislatures of the respective States, as the proper and legitimate foundation for a mixed constitutional system, such as that of the United States. Each of these radical defects in the Federal system is successively illustrated and enforced; but the total want of any sanction whatever to the laws of the Confederacy is dwelt upon as the master and fatal vice of the system, depriving it of "every vital principle of a political constitution."

"Under the form of such a constitution," says the paper, "it is in fact nothing more than a treaty of amity, commerce, and alliance between independent and sovereign States. From what cause could so fatal an omission have happened in the articles of confederation? From a mistaken confidence that the justice, the good faith, the honor, the sound policy of the several legislative assemblies would render superfluous any appeal to the ordinary motives by which the laws secure the obedience of individuals, — a confidence which does honor to the enthusiastic virtue of the compilers,

as much as the inexperience of the crisis apologizes for their errors." It is, then, shown conclusively by the results of experience, both in war and in peace, as well as by the necessary operation of the usual motives of human conduct, that all such confidence must, in the end, prove delusive, and the measures founded upon it nugatory and abortive.

The third and last aspect under which Mr. Madison considers the vices of the political system of the United States is introduced with this remark: "In developing the evils which vitiate the political system of the United States, it is proper to include those which are found within the States individually, as well as those which directly affect the States collectively; since the former class have an indirect influence on the general malady, and must not be overlooked in forming a complete remedy." After mentioning the multiplicity, and then the mutability, of the laws of the several States, as evils of a serious nature, he proceeds to treat of their frequent injustice in violating the rights of minorities, as an evil not only of a graver character, but one demanding particular watchfulness and special safeguards in a republican government. This delicate topic he developes in the following striking observations: —

"All civilized societies are divided into different interests and factions, as they happen to be creditors or debtors, — rich or poor, husbandmen, merchants, or manufacturers, members of differ-

ent religious sects, followers of different political leaders, inhabitants of different districts, owners of different kinds of property, &c. &c. In republican government, the majority, however composed, ultimately give the law. Whenever, therefore, an apparent interest or common passion unites a majority, what is to restrain them from unjust violations of the rights and interests of the minority or of individuals?" Paper money, instalment laws, occlusion of courts, making property a legal tender in payment of debts, &c. &c., he had already given as familiar instances of this unjust and partial legislation in many of the States.

An ardent friend to republican government, and, as such, most anxious to guard it from the traditional abuses of an unqualified democracy, Mr. Madison, after long reflection, came to the conclusion that one of the most effectual securities against the danger here pointed out would be found in an enlargement of the territorial sphere of government, comprehending within its limits so many and such diversified interests as to render a selfish combination of a majority, for the oppression of the minority, extremely difficult and precarious.

"A common interest or passion," he said, "is less apt to be felt, and the requisite combinations less easy to be formed, by a great than by a small number. The society becomes broken into a greater variety of interests, of pursuits, of passions, which check each other; whilst those who may feel a common sentiment have less opportunity of com-

munication and concert. It may be inferred, that the inconveniences of popular States, contrary to the prevailing theory, are in proportion, not to the extent, but to the narrowness, of their limits."

The concluding sentences of this paper are imbued with such a spirit of philosophy, guided by justice and animated by patriotism, that we cannot refrain from introducing them here; while the whole paper is so replete with instruction, and throws so much light upon the early history of American institutions, that we have thought it due alike to the curiosity of the reader and the importance of the matter, to give it entire in the Appendix to this volume.

"The great desideratum in government is such a modification of the sovereignty [the governing power] as will render it sufficiently neutral between the different interests and factions to control one part of the society from invading the rights of another, and, at the same time, sufficiently controlled itself from setting up an interest adverse to that of the whole society. In absolute monarchies, the prince is sufficiently neutral towards his subjects, but frequently sacrifices their happiness to his ambition or his avarice. In small republics, the sovereign will is sufficiently controlled from such a sacrifice of the entire society, but is not sufficiently neutral towards the parts composing it. As a limited monarchy tempers the evils of an absolute one, so an extensive republic meliorates the administration of a small republic.

"An *auxiliary* desideratum for the melioration of the republican form is such a process of elections as will most certainly extract from the mass of the society the purest and noblest characters which it contains, — such as will at once feel most strongly the proper motives to pursue the end of their appointment, and be most capable of devising the proper means of attaining it."

Of the republican statesmen of America, Mr Madison was undoubtedly the one who saw, the earliest and most clearly, the indispensable necessity of providing, in the scheme of the new government, some safeguard for the rights of the minority, which should not be inconsistent with the fundamental principle itself of popular institutions. In a letter, written several months before this time, to Mr. Monroe, he had expressed his sentiments most forcibly with regard to the abuses of the maxim which makes the temporary will of the majority the criterion of right and wrong. In that letter, dated the 5th of October, 1786, and referring to the proceedings which had then recently taken place in Congress for bartering the navigation of the Mississippi, he uses this noble and unequivocal language: —

"Should the measure triumph under the auspices of nine States, or even of the whole thirteen, I shall never be convinced that it is expedient, because I cannot conceive it to be just. There is no maxim, in my opinion, which is more liable to be misapplied, and which therefore more needs

elucidation, than the current one, that the interest of the majority is the political standard of right and wrong. Taking the word 'interest' as synonymous with ultimate happiness, in which sense it is qualified with every necessary moral ingredient, it is, no doubt, true. But taking it in the popular sense, as referring to the immediate augmentation of property and wealth, nothing can be more false. In the latter sense, it would be the interest of the majority, in every community, to despoil and enslave the minority of individuals, and, in a Federal community, to make a similar sacrifice of the minority of the component parts. In fact, it is only re-establishing, under another name and a more specious form, force as the measure of right; and in this light the Western settlements will infallibly view it."

The abuse of the power of the majority being the disease most incident to the nature of republican government, it was for that disease that Mr. Madison was most anxious to find a remedy, involving in itself no departure from republican principles, of which, from his earliest manhood, he had been a devoted disciple, as he was now the steady and enlightened champion. The problem, as he has elsewhere stated, was this: "To secure the public good and private rights against the danger of a factious majority, and at the same time to preserve the spirit and form of popular government, is the great object to which our inquiries should be directed. Let me add that it is the great desideratum

by which alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind." [1]

This great desideratum, Mr. Madison thought, was best accomplished by enlarging the territorial sphere of the government. The idea was first broached by him in the remarkable paper from which we have already given several extracts. But as the principle was a distinctive feature of his political creed, often recurred to by him, and in itself a most important and prolific one, it seems to demand a fuller development. Such a development we find from his own hand in a very able and luminous paper, written and published a few months later, from which we are the more prompted to give here a somewhat copious citation, because, besides the illustration of the principle in question, it draws an instructive parallel between the theories of republican and monarchical government, and points out the danger, in practice, of a transition from the former to the latter.

"It is of great importance in a republic, not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against

[1] Federalist, No. 10.

this evil: the one, by creating a will in the community independent of the majority, that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable.

"The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is a precarious security, because a power independent of the society may as well espouse the unjust views of the major as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the Federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.

"In a free government, the security for civil rights must be the same as that for religious rights. It consists, in the one case, in the multiplicity of interests; and, in the other, of the multiplicity of sects.[1] The degree of security in both cases will

[1] Mr. Madison was accustomed to quote with great approbation, as full of wisdom and truth, an observation made by Voltaire, during his residence in England, on the sources of religious freedom and security in that country. "If one religion only were allowed in England," said the French philosopher, "the government would possibly become arbitrary; if there were but two, the people would

depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper Federal system to all the sincere and considerate friends of republican government, since it shows, that, in exact proportion as the territory of the Union may be formed into more circumscribed confederacies or States, oppressive combinations will be facilitated; the best security for the rights of every class of citizens will be diminished; and, consequently, the stability and independence of some member of the government, the only other security, must be proportionally increased.

"Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit. In a society, under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature, where the weaker individual is not secured against the violence of the stronger: and as, in the latter case, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a

cut each other's throats; but, as there are such a multitude, they all live happy and in peace." — See *Lettres sur les Anglais*. In the *Dictionaire Philosophique*, tit. *Tolérance*, Voltaire repeats the same observation as a general law of the social economy: "Si vous avez deux religions chez vous, elles se couperont la gorge; si vous en avez trente, elles vivront en paix."

government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced by a like motive to wish for a government which will protect all parties, the weaker as well as the more powerful.

"It can be little doubted, that, if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government, within such narrow limits, would be displayed by such re-iterated oppressions of factious majorities, that some power, altogether independent of the people, would soon be called for by the voice of the very faction whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of the majority of the whole society could seldom take place upon any other principles than those of justice and the general good; while, there being thus less danger to a minor from the will of the major party, there must be less pretext also to provide for the security of the former by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it be within a practicable sphere, the more duly capable it will be of self-government. And, happily

for the republican cause, the practicable sphere may be carried to a very great extent by a judicious modification and mixture of the Federal principle." [1]

With regard to the abuses of the State legislatures under the articles of confederation, it may perhaps be thought by some, who form their judgment from the state of things since the adoption of the Constitution of 1788, that the picture of those abuses drawn by Mr. Madison, in his paper on the "vices of the political system of the United States," is somewhat overcharged. But it must be borne in mind, that the fundamental restrictions imposed for the first time in 1788, and the power then given to the Federal and State judiciaries to enforce those restrictions by declaring all legislative acts passed in contravention of them to be null and void, have essentially contributed to produce the change in question. The very restrictions referred to — interdicting any State from emitting bills of credit, making any thing but gold and silver coin a tender in payment of debts, or passing laws impairing the obligation of contracts — are in themselves the strongest presumptive evidence that such abuses had been hitherto practised by the States.

But the fact itself has passed incontestably into history, embalmed in the language of the eloquent public denunciation directed against it at the time. "The loss," says the authority alluded to, "which America has sustained, since the peace, from the

[1] Federalist, No. 51, written by Mr. Madison.

pestilent effects of paper money on the necessary confidence between man and man, on the necessary confidence in the public councils, on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the States chargeable with this ill-advised measure, which must long remain unsatisfied; or, rather, an accumulation of guilt, which can be expiated no otherwise than by a voluntary sacrifice, on the altar of justice, of the power which has been the instrument of it." The same authority adds: "The sober people of America have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, — every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society."[1]

Of all the States of the Confederacy, none perhaps was more exempt from this vicious course of legislation than Virginia; but, even in that vigilant and conservative Commonwealth, there had been a

[1] Federalist, No. 44, also by Mr. Madison.

large accumulation of legislative abuses of various kinds. Without recalling the well-known and eloquent testimony of Mr. Jefferson on the subject,[1] — an authority above all suspicion of a bias unfavorable to the State governments, — we confine ourselves to citing here the personal experience of another illustrious champion of the same political faith, Colonel George Mason, as freely expressed by him to a friend with whom he had long served in the legislative councils of the State. In a letter of the 6th of May, 1783, to Colonel William Cabell, of Amherst, he gives utterance to his feelings of deep mortification and discouragement, joined to sentiments of stern moral reprobation, occasioned by the lax or unjust measures of the legislature.

"I hope," said he, "the Assembly will revise several of our laws, and abolish all such of them as are contrary to the fundamental principles of justice. This, and a strict adherence to the distinctions between right and wrong for the future, is absolutely necessary to restore that confidence and reverence in the people for the legislature, which a contrary conduct has so greatly impaired, and without which their laws must ever remain little better than a dead letter. Frequent interferences with private property and contracts; retrospective laws, destructive of all public faith as well as confidence between man and man; and flagrant violations of the Constitution, — must disgust

[1] Notes on Virginia, chap. XIII.

the best and wisest part of the community, occasion a general depravity of manners, bring the legislature into contempt, and, finally, produce anarchy and public convulsion.

"I write to you with the freedom and sincerity of a friend, knowing that you detest such measures as much as I do. They drove me out of the Assembly, with a thorough conviction that it was not in my power to do any manner of good. The love of my country is not extinguished by it; and if I recover tolerable health, and have cause to think I can do any essential public service, I shall return again into the legislature."[1]

Before speaking of the remedies in detail proposed by Mr. Madison for the vices pointed out by him in the political system of the United States, it is proper we should look back to the characters and opinions of the eminent men whom the legislature of Virginia had associated with him in the great task of reform. General Washington, by a title of priority which none could fail to recognize, had been placed at the head of the deputation appointed by the State to the convention of Philadelphia. He had intimated to Mr. Madison, before his appointment, that there were obstacles to his acceptance which he deemed insuperable. But the legislature, nevertheless, under a deep sense of the importance of his services on so vital an occasion, and hoping that the impediments referred to might yet be overcome, took the liberty

[1] See the letter in Virginia Historical Register, vol. III. pp. 84 and 85.

of including his name in the commission in its destined place of pre-eminence.

On the 7th day of December, 1786, three days after the appointment of the commissioners, Mr. Madison communicated to him, in the following delicate and deferential terms, what had been done by the legislature: —

"Notwithstanding the communications in your favor of the 18th ultimo, which has remained until now unacknowledged, it was the opinion of every judicious friend whom I consulted, that your name could not be spared from the deputation to the meeting in May at Philadelphia. It was supposed, in the first place, that the peculiarity of the mission, and its acknowledged pre-eminence over every other public object, may possibly reconcile your undertaking it with the respect which is justly due, and which you wish to pay, to the late officers of the army; and, in the second place, that, although you should find that or any other consideration an obstacle to your attendance on the service, the advantage of having your name in the front of the appointment, as a mark of the earnestness of Virginia and an invitation to the most select characters from every part of the Confederacy, ought at all events to be made use of. In these sentiments, I own, I fully concurred, and flatter myself that they will, at least, apologize to you for my departure from those held out in your letter. I even flatter myself that they will meet a serious consideration with yourself, whether the

difficulties which you suggest ought not to give way to them."

In reply to this letter, General Washington entered into a fuller and more detailed statement, than he had before done, of the considerations which appeared to him to oppose an insuperable barrier to his taking a seat in the convention of Philadelphia in May next. In his first communication, he spoke of the embarrassment he must feel in being present on that occasion, after having formally announced, in a circular letter to the several State Societies of the Cincinnati, his inability to meet his old comrades in arms in their regular triennial assemblage, which was appointed to take place at the same time in the same city. This circumstance, superadded to the resolution he had long since formed, and proclaimed to his countrymen, never again to engage in any public employment, rendered it impossible for him, he thought, to appear in the convention, without a breach of both consistency and propriety. He now imparted to Mr. Madison, in the "confidence" of their mutual friendship, farther considerations of a very delicate character, connected with his relations to the Society of the Cincinnati, which added sensibly to the embarrassment that would be thrown upon him, in the event of his attendance, by the contemporaneous meeting of the two bodies in the city of Philadelphia.[1]

On the 24th of December, 1786, Mr. Madison

[1] See this letter in Sparks's Washington, vol. IX. pp. 216–218.

responded to this communication in that spirit of sincere and respectful attachment which animated all his correspondence with his illustrious friend.

"Your favor of the 16th instant came to hand too late on Thursday evening to be answered by the last mail. I have considered well the circumstances which it confidentially discloses, as well as those contained in your preceding favor. The difficulties which they oppose to an acceptance of the appointment in which you are included, can as little be denied as they can fail to be regretted. But I am still inclined to think, that the posture of our affairs, if it should continue, would prevent any criticism on the situation which the contemporary meetings would place you in; and wish that, at least, a door could be left open for your acceptance hereafter, in case the gathering clouds should become so dark and menacing as to supersede every consideration but that of our national existence or safety. A suspense of your ultimate determination would be nowise inconvenient in a public view, as the executive are authorized to fill vacancies, and can fill them at any time; and, in any event, three out of seven deputies are authorized to represent the State. How far it may be admissible in another view will depend, perhaps, in some measure on the chance of your finally undertaking the service, but principally on the correspondence which is now passing on the subject between yourself and the governor."

Washington, in his answer to the official notification of his appointment made to him by the governor, after referring in general terms to the circumstances which rendered his acceptance of it incompatible with measures previously taken by him, and from which he saw but little prospect of being disengaged, respectfully requested that some other character, on whom greater reliance could be had, should be substituted in his place. The governor replied by assuring him, as Mr. Madison had before intimated, that no inconvenience would result from his delaying his final determination, and begged him to keep the subject under his deliberation to the latest moment, as the crisis impending over the country might assume, from day to day, such aspects of increasing gravity as to overrule, in the end, every other consideration.

On this footing, the matter rested for several months. General Washington, as was his wont, consulted freely in the interim with those who were entitled to his confidence, and, in particular, sought the opinions of some of his military friends at a distance, who had been most intimately associated with him in the trying scenes of his revolutionary service. In writing to one of these, Colonel Humphreys, who had been a member of his staff, he communicated what had passed between him and his friends in Virginia on the subject of the appointment to the convention, and referred to Mr. Madison in such terms

as to show, in a very marked manner, the especial confidence he reposed in him. "I immediately wrote," he said, "to my particular friend, Mr. Madison, and assigned the same reasons to others."[1]

In reading the answers of these military comrades, it is impossible not to be touched by the devoted loyalty they evince to the fame of their revered chief, mingled with a patriotic and enlightened consideration for the good of the country. For some time after the appointment of commissioners by Virginia, it seemed doubtful whether the convention would be generally attended from the other States; and, in this condition of things, the old associates in arms of Washington were very unwilling that he should commit himself to an unconditional attendance. In a letter from one of them, dated the 14th of January, 1787, the veteran soldier and patriot, who was the writer, says: "The principles of the purest and most respectful friendship induce me to say, that however strongly I wish for measures which would lead to national happiness and glory, yet I do not wish you to be concerned in any political operations, of which there are such various opinions. There may, indeed, arise some solemn occasion in which you may conceive it to be your duty again to exert your utmost talents to promote the happiness of your country. But this occasion must be of an

[1] See letter to Colonel Humphreys, of 26th December, 1786, in Sparks's Washington, vol. IX. p. 222.

unequivocal nature, in which the enlightened and virtuous citizens should generally concur."[1]

Another valued military friend, writing to him on the 20th of the same month, says: "I know your personal influence and character is justly considered the last stake which America has to play. Should you not reserve yourself for the united call of a continent entire?"[2]

Mr. Madison was not behind any of these ancient and long-tried friends of Washington in a just sensibility to his personal fame and power of future usefulness, as they might be affected by his taking part in the proceedings of the proposed convention. In a letter to Governor Randolph at a later period, when, by the course of events, most of the difficulties previously existing had been much diminished in their force, his anxiety for the character and renown of his illustrious countryman prompted him to make the following suggestions: "The probability of General Washington's coming to Philadelphia is, in one point of view, flattering. Would it not, however, be well for him to postpone his actual attendance, until some judgment can be formed of the result of the meeting? It ought not to be wished by any of his friends that he should participate in an abortive proceeding."[3]

[1] Letter of General Knox, which see in Sparks's Washington, vol. IX. pp. 513–516.

[2] See extract of letter of Colonel Humphreys, in Marshall's Life of Washington, vol. II. p. 115.

[3] For letter of Mr. Madison here referred to, see Madison Debates and Correspondence, vol. II. pp. 634, 635.

But the lofty patriotism of Washington, and his never-failing sense of duty, invoked more and more by the increasing perils of the country, and encouraged at the same time by the prospect of less divided public councils under an acceptable leader, induced him, at length, to sacrifice his personal ease, and all of his fondly cherished plans of retirement and private usefulness, and to embark once more on the stormy and uncertain sea of politics. In a letter to the governor of Virginia, of the 28th of March, 1787, after adverting to the resolution he had formed never again to appear on the public theatre, and the reluctance with which he should quit a retirement that had become as necessary as it was grateful to him, he says, that the urgent and flattering call made for his services had determined him to repair to the convention at the appointed time, if his health should permit, provided the thoughts of the executive should not have been turned to some other character to supply his place. The annunciation was joyfully received by the whole nation, no less than by his native State.

The opinions which General Washington carried with him into the convention with regard to the defects of the confederation, and the nature and extent of the reforms required in it, are a topic of inquiry that naturally presents itself, with deep interest, to the mind of every reader. As commander-in-chief of the armies of America in the great contest for independence, in which, for

the necessary support of the cause, he was brought into close and constant communications with both the national and State authorities, and as a most anxious as well as enlightened observer of the course of events since the peace, with all the means of information derived from an extensive correspondence, no one could have had better opportunities of studying the actual workings of the political system of the United States than he had. And surely there was no one who — by his calm, majestic common sense; by a judgment which a singular union of caution and sagacity rendered almost infallible; and by a purity and elevation of patriotism superior to every bias of passion or prejudice — was more capable of forming conclusions, from what he observed, worthy of the confidence and respect of his countrymen. What those conclusions were, a few extracts from an unreserved correspondence of this period with his friends will abundantly show.

In a letter to Mr. Jay, of the 1st of August, 1786, he thus plainly and impressively communicated his views of the radical disease of the body politic, as well as the urgent necessity of a prompt and efficacious remedy: —

"We have probably had too good an opinion of human nature in forming our confederation. Experience has taught us, that men will not adopt, and carry into execution, measures the best calculated for their own good, without the intervention of a coercive power. I do not conceive we can

long exist as a nation, without having lodged somewhere a power which will pervade the whole Union, in as energetic a manner as the authority of the State governments extends over the several States.

"Requisitions are a perfect nullity, where thirteen sovereign, independent, disunited States are in the habit of discussing and refusing compliance with them at their option. If you tell the State legislatures they have violated the treaty of peace, and invaded the prerogatives of the Confederacy, they will laugh in your face. What, then, is to be done? Things cannot go on in the same train for ever. It is much to be feared, as you observe, that the better kind of people, being disgusted with the circumstances, will have their minds prepared for any revolution whatever. We are apt to run from one extreme to another. To anticipate and prevent disastrous contingencies would be the part of wisdom and patriotism.

"What astonishing changes a few years are capable of producing! I am told that even respectable characters speak of a monarchical government without horror. From thinking proceeds speaking; thence to acting is a single step. But how irrevocable and tremendous! What a triumph for our enemies to verify their predictions!—what a triumph for the advocates of despotism to find that we are incapable of governing ourselves; and that systems, founded on the basis of equal liberty, are merely ideal and fallacious!"

To Mr. Madison, on the 5th day of November, 1786, — the legislature of Virginia being then in session, — he embosomed himself in the following earnest and even pathetic language; well knowing that in him he should find a sympathizing and responsive auditor: —

"Fain would I hope that the great and most important of all subjects, the Federal government, may be considered with that calm and deliberate attention which the magnitude of it so critically and loudly calls for. Let prejudices, unreasonable jealousies, and local interests, yield to reason and liberality. Let us look to our national character, and things beyond the present moment. No morn ever dawned more favorably than ours did; and no day was ever more clouded than the present.

"Wisdom and good examples are necessary, at this time, to rescue the political machine from the impending storm. Virginia has now an opportunity to set the latter, and has enough of the former, I hope, to take the lead in promoting this great and arduous work. Without an alteration in our political creed, the superstructure we have been seven years in raising, at the expense of so much treasure and blood, must fall. We are fast verging to anarchy and confusion. Thirteen sovereignties pulling against each other, and all tugging at the Federal head, will soon bring ruin on the whole; whereas a liberal and energetic constitution, well checked and well watched to prevent encroachments, might restore us to that degree of respecta-

bility and consequence to which we had the fairest chance of attaining."

He wrote again to Mr. Madison on the 31st of March, 1787, — but a few weeks before the meeting of the convention, — indicating, in general terms, the character of the reform which he thought it would be incumbent on that body to propose. "I confess," he says, "that my opinion of public virtue is so far changed that I have my doubts whether any system, without the means of coercion in the sovereign, will enforce due obedience to the ordinances of a general government, without which every thing else fails. Laws or ordinances unobserved, or partially attended to, had better never have been made; because the first is a mere nullity, and the second is productive of much jealousy and discontent. But what kind of coercion, you may ask. This, indeed, will require thought, though the non-compliance of the States with the late requisition is an evidence of the necessity.

"It gives me great pleasure to hear that there is a probability of a full representation of the States in the convention; but, if the delegates come to it under fetters, the salutary ends will be greatly embarrassed and retarded, if not altogether defeated. I am desirous of knowing how this matter is, as my wish is that the convention may adopt no temporizing expedient, but probe the defects of the Constitution to the bottom, and provide a radical cure, whether it be agreed to or not. A con-

duct of this kind will stamp wisdom and dignity on their proceedings, and hold up a light which, sooner or later, will have its influence."

The foregoing extracts from the contemporary record of the opinions of Washington and Madison, as expressed to their respective friends, as well as to each other, show how entirely they agreed in their views of the fatal defects of the existing political system of the country, and of the thorough reform which it required. *Idem sentire de Republica* was held by the ancients to be an essential element in a firm and lasting friendship;[1] and it cannot be doubted that the identity of political sentiments between these two noble sons of Virginia, on questions of such vital importance to the public happiness, served to strengthen and cement a friendship, springing from congenial personal characteristics and virtues, and resting on the solid basis of mutual confidence and appreciation.

Mr. Henry, whose name stood next to that of Washington on the list of delegates chosen by the legislature of Virginia to the Federal Convention, very early declined his appointment. In a letter from Governor Randolph to Mr. Madison of the 1st of March, 1787, the writer says, "Mr. Henry peremptorily refuses to go thither, as being distressed in his private circumstances." In the same letter, Mr. Randolph speaks of the strong dissatisfaction manifested by Mr. Henry in regard to the proceedings of Congress on the subject of the Mis-

[1] "Idem velle atque idem nolle, ea demum firma amicitia." — SALLUST.

sissippi; and, in the influence of that feeling, combined with certain politic considerations, Mr. Madison was disposed to find the explanation of Mr. Henry's unwillingness to take part in the deliberations of the convention. Writing to Mr. Jefferson on the 19th of March, 1787, he says, "I am not singular in ascribing Mr. Henry's refusal to attend the convention to the policy of keeping himself free to combat or espouse the result of it according to the issue of the Mississippi business, among other circumstances."[1]

We have already seen, that Mr. Madison, in a letter to General Washington written a few months before this time, spoke of Mr. Henry as having been one of the champions of the Federal cause.[2] In the sense, however, of an enlargement and invigoration of the Federal authority, — the question actually depending, — Mr. Henry could hardly have been counted, at any time, among the friends of the Federal cause, according to any of the tests applied in those days. During the progress of the War of Independence, Mr. Henry's strong American feelings enlisted him warmly on the side of Congress in every measure resorted to for the vigorous prosecution of the contest; and he became thus known as a Federal champion in contradistinction to those who, like Dr. Arthur Lee, and his brother, Richard Henry Lee, were often arrayed in violent, if not factious, opposition to the policy of Congress.

[1] See Madison Debates and Correspondence, vol. II. p. 623.

[2] Ante, p. 142, chap. xxv.

But, after the close of the war, Mr. Henry does not appear, whatever may have been his general declarations, to have given an explicit sanction or positive co-operation, in a single instance, to any of the measures brought forward for correcting the defects of the confederation. One of the earliest of those measures, and which was regarded at the time as especially a test of just and proper Federal sentiments, was the proposition, so ably and efficiently patronized by Mr. Madison himself, to invest Congress with the power of raising a general revenue by a moderate impost on foreign merchandise. If the highest contemporary testimony is to be credited, Mr. Henry was far from giving an unequivocal support even to this measure of obvious and vital necessity, finally concurred in by every State in the Confederacy but one.[1]

[1] The paramount regard due to the truth of history requires that we should give here the following extracts from the contemporary correspondence of Mr. Jefferson with Mr. Madison, in support of the statement in the text. In writing to Mr. Madison, on the 7th day of May, 1783, in regard to the probable fate of his revenue propositions then before the legislature of Virginia, Mr. Jefferson, after taking great pains to inform himself by personal communication with the members, says:—

"This is the view I form, at present, of the leaders. Dr. Lee, Richard Henry Lee, Mann Page, Taylor, will be against them. So will Thruston and White, if elected; and even Arthur Campbell is thought worthy of being named with those, as having some influence in the South-western quarter. In their favor will probably be Tyler, Tazewell, General Nelson, William Nelson, Nicholas, and a Mr. Stuart, a young man of good talents from the westward. Henry, as usual, is involved in mystery. Should the popular tide run strongly in either direction, he will fall in with it. Should it not, he will have a struggle between his enmity to the Lees, and his enmity to every thing which may give influence to Congress."

In writing again on the 1st of June, he says: "I hear but little from our Assembly. Mr. Henry

The whole drift and tendency of Mr. Henry's principles, whether exemplified in his action on questions of interior State legislation or measures of Federal policy, inclined him to the relaxation, rather than the invigoration, of every form of civil and political authority or restraint. It may, therefore, be safely assumed that feeling no sympathy with the objects of the proposed convention, and recognizing in himself no aptitude for the task of framing constitutions of government,[1] — for he was one of those rare judges of human nature that knew himself as well as others, — he came to the conclusion, that he would best consult alike his future liberty of action, the strong bias of his present sentiments, and the ultimate prospect of popular favor, by declining altogether the responsibilities of the appointment which had been so

has declared in favor of the impost. This will insure it. How he is as to the other questions of importance, I do not learn."

Finally, on the 17th of June, he writes thus: "My hopes of the success of the Congressional propositions have lessened exceedingly. Mr. Henry had declared in favor of the impost; but, when the question came on, he was utterly silent. I understand it will certainly be lost, if it be not already."

It was accordingly lost at that session, as Mr. Jefferson anticipated. But, being again taken up at the succeeding session in the autumn of the same year, it was passed by a decided majority.

[1] This estimate of a characteristic deficiency of Mr. Henry's mind, — combined with most extraordinary gifts of another kind, which all must accord to him, — is fully corroborated by the opinion of his eloquent biographer, expressed in a private letter to a friend, while he was engaged in the preparation of his work. Writing to Judge Carr, on the 20th of April, 1815, Mr. Wirt says: —

"He [Mr. Henry] was a blank military commander, a blank governor, and a blank politician in all those useful points which depend on composition and detail." — See the letter in Kennedy's Life of Wirt, vol. i. pp. 344–348.

honorably tendered to him by the legislature of the State.

Next in succession on the list of the Virginia delegation stood the name of Edmund Randolph, governor of the State. Mr. Randolph was of a family that had been long distinguished in the political annals of Virginia. His grandfather, his father, and himself had successively filled, and with great reputation, through a period of more than thirty years, the important office of attorney-general. His uncle, Peyton Randolph, was the revered president of the first Continental Congress, as he had been, for many years, the presiding officer of the Colonial Assembly of Virginia. At the breaking-out of the Revolution, his father adhered to the mother country, and went over to England, where he found the asylum of an early grave. The defection of the parent, instead of being visited as a reproach upon the son, enhanced by its contrast, in the eyes of a generous people, the merit of that son's fidelity and patriotism. The mantle of his illustrious uncle's popularity seemed to descend upon him; and, after having been attorney-general of the State for ten years, and for three years of that time one of its delegates in the Congress of the confederation, he had been recently elected, at the early age of thirty-three years, governor of the Commonwealth.

This rapid and unwonted course of promotion was not unsustained by many personal qualities of great merit. To extensive learning and attain-

ments, both general and professional, Mr. Randolph added a winning address, and a rich and captivating elocution set off by the advantages of an uncommonly imposing person. His manners and dispositions were formed alike to inspire and return lively sentiments of friendship and affection. A close intimacy arose between him and Mr. Madison at an early period, when the latter, first as a delegate in the State convention of 1776, and afterwards as a member of the executive council, resided in the city of Williamsburg,— the abode, as it was the birth-place, of Mr. Randolph. He had also early acquired a place in the confidence and esteem of General Washington, into whose military family he was received during the first scenes of the war of the Revolution.

To these recommendations and advantages, intrinsic and extrinsic, there was, however, one drawback, which proved the source of future embarrassments both to him and to his friends,— an instability of conduct and opinion, resulting not from moral, but intellectual, causes. With all of Mr. Randolph's discipline and attainments, he seemed never to have acquired the power of fixing clear and determinate views of his subject, and of arriving at firm and settled conclusions. His learning and stores of information, exceeding his capacity of digestion, oppressed him; and his very anxiety for the right often bewildered him in its pursuit. It thus happened that he experienced, in the important scene of action on which

he was about to enter, and in some other transactions of his public life, the fate which inspired wisdom has taught us ever awaits the "double-minded" man. "He that wavereth is like a wave of the sea, driven with the wind, and tossed."

Mr. Randolph went into the convention as profoundly impressed as General Washington or Mr. Madison was, with the absolute necessity of a thorough and radical reform of the confederation, but without any definite ideas of the nature, extent, or operation of that reform. Desiring deep-reaching and fundamental innovations on its principles, and yet wishing to preserve its form, he was at once involved in a conflict of opposing ideas from which he found it exceedingly difficult to extricate himself.[1] The consequence was, that, after co-operating generally with the friends of reform in the convention, he at last refused to give the sanction of his signature to the Constitution which was the result of their deliberations; and then, after appealing to his constituents in an elaborate detail of his objections to the instrument, he finally voted for, and ably and earnestly advocated, its ratification by the convention of his State. In all this he acted sincerely, and, on some occasions, even with no small degree of moral courage. But a more decided and unwaver-

[1] See letter of Mr. Madison, of the 8th of April, 1787 (Madison Debates and Correspondence, vol. II. p. 631), in which he points out the obstacles that in his opinion rendered inexpedient, if not impracticable, the adoption of some of Mr. Randolph's ideas as to the mode of carrying into effect the proposed constitutional reform.

ing course, at first, would have saved many embarrassments to his friends and the cause they sustained; have deprived its adversaries of weapons used with more or less damaging effect; and spared to himself a large amount of personal annoyance and mortification.

The fourth-named member of the delegation of Virginia to the Federal Convention was John Blair, who, like Edmund Randolph, bore an ancestral name most intimately and honorably associated with the history of Virginia. James Blair, the commissary of the Bishop of London, and the revered patron of learning and religion in the Colony, was his great uncle. His father, known as President Blair, from the circumstance of his having long filled the office of president of the King's council in Virginia, was distinguished, in that and the various other official trusts he held, by his firm and manly principles of liberty, civil and religious, as well as by his unsullied integrity and honor.

The son came into public life, partaking the principles and popularity of his father, at a very early age, and had served several years in the House of Burgesses of the Colony before the period of the Revolution. He was a member of the Virginia Convention of 1776, and one of the committee of that body, which reported the republican constitution of the State. He was soon chosen one of the judges of the first general court, of which he became the chief-justice in 1779, and in the following year was appointed to

fill the vacancy in the high court of chancery, occasioned by the death of that spotless patriot and virtuous magistrate, Robert Carter Nicholas. He was still the incumbent of this office, when he was included by the legislature in the list of deputies to the Federal Convention.

Though but few remains of Mr. Blair's public labors have come down to us, we have the concurring testimony of his distinguished contemporaries, as well as the implied evidence of the many important official duties intrusted to him, that he was a man of a high order of wisdom and ability. Completing his professional studies at the Inner Temple in London, he soon rose to eminence at the bar of the general court of Virginia; and, combining political with forensic pursuits, he had the best possible training for an enlarged sphere of public usefulness. His personal virtues and accomplishments are commemorated with all the warmth of affection by an eminent friend and associate, who knew him well, and who emphatically places him in the first rank among those "whose conduct, both in public and private life, he esteemed models of human excellence and perfection."[1]

There is every reason to believe, from the character and antecedents of Mr. Blair, that he went into the convention feeling the full force of all those considerations which demanded a thorough reform of the Federal system. He took no part in the debates of the convention: but his votes indi-

[1] See letter of Judge St. George Tucker, in Kennedy's Life of Wirt, vol. i. p. 316.

cated a general conformity of opinion with his colleagues, General Washington and Mr. Madison; and with them he affixed his signature to the Constitution which was produced. He subsequently voted for its ratification in the convention of Virginia, and closed his long and honorable career by administering one of its most august functions as associate justice in the supreme court of the United States, to which he was appointed by the first president, Washington himself.

After the name of Judge Blair in the Virginia deputation came Mr. Madison's, and then that of Colonel George Mason. Of Colonel Mason we have had occasion to speak so often, and in the language of that respectful homage which posterity will ever pay to his memory, that we need not here dwell on his great abilities and exalted character. Never having been connected with the Federal councils, his mind had not hitherto been accustomed to contemplate, in any special manner, the vast interests involved in a common and well-organized government for the whole Confederacy. Accordingly, when, in December, 1783, Mr. Madison, on the close of his first term of service in Congress, made a visit to Colonel Mason at Gunston Hall, while he found his views on all the other public questions of the day such as he expected, he thought him "too little impressed with either the necessity or the proper means of preserving the Confederacy."[1]

[1] See letter to Mr. Jefferson, in Madison Debates and Correspondence, vol. i. p. 580.

In this state of mind Colonel Mason probably continued, when, in September, 1786, he failed to attend the Annapolis convention as one of the commissioners appointed by Virginia. But the painful and rapidly accumulating lessons of the public calamities, resulting from the inefficiency and anarchy of the confederation, could not be lost upon so thoughtful and enlightened a spirit as his. Hence Mr. Madison, in writing to Mr. Jefferson then in Paris, on the 23d day of April, 1787, tells him, "Colonel Mason, I am informed, is renouncing his errors on the subject of the confederation, and means to take an active part in its amendment."[1] He did take a most able, as well as active, part in the convention soon after assembled at Philadelphia, which he attended throughout its whole session; and but for some unacceptable changes made, during the last fortnight of the session, in the earlier frame of the Constitution, he declared to a friend, as we shall hereafter see, that "he would have set his hand and heart to it."

The last named, but far from being the least illustrious, of the deputation of Virginia, was George Wythe. He alone, of all his colleagues, had had the proud privilege of affixing his name to the Declaration of American Independence. He was every way a man of most noble character, cast in the finest mould of ancient simplicity and grandeur. He was a great lover, as he was a most successful cultivator, of the Greek and Roman

[1] See letter to Mr. Jefferson, in Madison Debates and Correspondence, vol. i. p. 643.

literature, and had thus become deeply penetrated with the maxims and spirit of the ancient republican manners and virtues.

At an early age, he entered warmly into the controversy between the colonies and the mother country, espousing the rights of the former with so much ardor, that the remonstrance of the House of Burgesses of Virginia to the English House of Commons in 1764, of which he was the draughtsman, was subjected, by his colleagues of the committee, from considerations of political prudence, to a very free process of expurgation, both in tone and language. Neither he nor they were the less determined in their resistance to the usurpations of King and Parliament; and, in 1775, at the age of forty-nine years, he actually enrolled himself in a volunteer company, for the military defence of the Colony. He was soon after, in the same year, elected one of the delegates of Virginia to the general Congress of delegates from all the Colonies, in which body he avowed himself boldly and decidedly in favor of independence, of foreign alliances, and a closer confederation of the Colonies, in advance of any public measures taken for either of those objects. When the Declaration of Independence was finally proposed, he stood, with John Adams and Richard Henry Lee, a leading champion of it on the floor of Congress.

After the consummation of that great political event, he returned to Virginia; and, again entering into the service of the State in her domestic coun-

cils, was appointed, with Mr. Jefferson and Mr. Pendleton, one of the revisers of the laws; became subsequently Speaker of the House of Delegates, in which situation he was distinguished by his dignity and parliamentary skill; and when, in 1778, the court of chancery was first organized, he was chosen, with Mr. Pendleton and Mr. Nicholas, to occupy the bench of that high tribunal, of which he was a member at the time of his election to the Federal Convention

Few persons, of whom the remembrance has been preserved, ever presented a more winning union of rare virtues and talents than Mr. Wythe. To great suavity of manners and benevolence of disposition, he joined the firmest and loftiest integrity. In his high judicial office, the duties of which he administered for nearly thirty years, he was not more distinguished for his great learning and immaculate purity, to which all did homage, than for the stern independence with which he bore himself against every influence of popular excitement or legislative encroachment. Instances were not wanting to test the strength of his virtue, in both of these respects; and to no one could the words of one of his familiar classic oracles be more truly applied than to himself, —

> "Non civium ardor prava jubentium,
> Non vultus instantis tyranni,
> Mente quatit solida."

The generous spirit of liberty, which he possessed in a very high degree, was in him so blended

with, and tempered by, the love of justice, of order and stability, that he was ever able to maintain the balance of his judgment in perfect equipoise, amid the antagonism of opposing political creeds. He early saw the necessity of a closer confederation of the Colonies for the preservation of their common liberty and independence. Even in January, 1776, preceding by four months the formal introduction of the subject before Congress by Mr. Lee, under the resolutions of the convention of Virginia, he expressed to one of his patriotic associates from another Colony the deep solicitude he felt for the completion of such a bond, and declared, that, "whoever should begin the work, he would throw in his mite among them."[1]

When the articles of confederation, finally agreed upon, proved on trial so inadequate to their end, he could not but enter into the views of those who desired an efficient reconstruction of the system. With these sentiments he repaired to the general convention at Philadelphia; and, though he was soon recalled from that body by a severe domestic affliction, — the illness and death of his wife, — he afterwards, in the convention of his own State, gave his hearty support to the result of their labors.

To supply Mr. Henry's place in the delegation of Virginia to the convention, the governor, who was authorized to fill supervening vacancies, offered

[1] See letter of Samuel Adams, of 15th January, 1776, in Works of John Adams, vol. IX. p. 373.

the appointment first to General Thomas Nelson, and then to Mr. Richard Henry Lee. Both of these gentlemen having declined it, probably from disinclination to the objects of the convention, it was conferred on Dr. James M'Clurg, of the city of Richmond, who adorned a high professional and social standing by the advantage of liberal studies, of extensive foreign travel, and of varied and enlightened observation in his own country, as well as abroad. We have already seen that his talents and attainments were such as to have brought him within the contemplation of Mr. Madison and other friends, as early as 1782, for the important office of secretary for foreign affairs. He took his seat in the convention with the rest of his colleagues, but was prevented by other engagements from continuing to the close of its deliberations. His general views, however, are known to have favored the reform which was finally recommended.

NOTE.

There are but few relics now preserved of Mr. Wythe's style of argument and elocution in debate, which Mr. Jefferson describes as "easy, chaste, logical, and learned." — See his letter to Sanderson, 31st August, 1820. Besides the meagre sketch of his speech, in favor of the ratification of the Constitution, in the report of the proceedings of the Virginia convention of 1788, we have no other specimens of his manner of speaking than the occasional fragments given by Mr. John Adams, in his very brief notes of the debates of Congress in 1775 and 1776. Some of these fragments appear to us so full of spirit, of concentrated thought, and a certain Demosthenian energy, that we are tempted to give two or three citations of them from the notes of Mr. Adams, recommended no less by the importance of the matter than by the historical interest attached to the character of the speaker.

In a debate on the 21st of October, 1775, respecting the expediency of opening the American ports for foreign trade, Mr. Wythe said: —

"Why should not America have a navy? No maritime power, near the sea-coast, can be safe without it. It is no chimera. The Romans suddenly built one in their Carthaginian War. Why may we not lay a foundation for it? We abound with firs, iron ore, tar, pitch, turpentine; we have all the materials for the construction of a navy. No country exceeds us in felicity of climate, or fertility of soil. America is one of the wings on which the British eagle has soared to the skies. I am sanguine and enthusiastical enough to wish and to hope that it will be sung, — *America inter nubila condit.*"

In the close of the same speech, he pronounced, with a prophet's fire: "Our petition [to the King] may be declared to be received graciously, and promised to be laid before Parliament; but we can expect no success from it. Have they ever condescended to take notice of you? Rapine, depopulation, burning, murder. Turn your eyes to Concord, Lexington, Charleston, Bristol, New York; there you see the character of Ministry and Parliament."

In another debate on the 16th of January, 1776, urging the importance of forming treaties of commerce with foreign powers, he used this manly and noble language: —

"But other things are to be considered, before such a measure is adopted. In what character shall we treat? As subjects of Great Britain? As rebels? Why should we be so fond of calling ourselves dutiful subjects? If we should offer our trade to the court of France, would they take notice of it, any more than if Bristol or Liverpool should offer theirs, while we profess to be subjects? No: we must declare ourselves a free people." — See Works of John Adams, vol. II. pp. 479, 480, and 486.

CHAPTER XXVIII.

Mr. Madison's Opinions respecting Nature of Reforms in Federal System — His Letter to General Washington on the Subject — Congressional Negative on State Laws — Power of Judiciary to declare null and void Laws contrary to the Constitution, then unsettled — History of the Question — Early Decisions of the Courts of Virginia upon it — Opinions of Judges Pendleton and Wythe — Meeting of Federal Convention — Washington elected President of the Convention — Characters of Delegates from the Several States — Delegation of Pennsylvania, Franklin, Morris, Wilson, &c. &c. — Of New Hampshire, Langdon and Gilman — Of Massachusetts, Gerry, King, &c. &c. — Of Connecticut, Johnson, Sherman, and Ellsworth — Of New York, Hamilton, Yates, and Lansing — Of New Jersey, Livingston, Patterson, &c. &c. — Of Delaware, Dickinson, Read, &c. &c. — Of Maryland, M'Henry, Carroll, Mercer, &c. &c. — Of North Carolina, Alexander Martin, Davie, Williamson, &c. &c. — Of South Carolina, Rutledge, the Pinckneys, &c. — Of Georgia, Few, Baldwin, &c. — Tribute of Mr. Madison to Character of the Convention — He prepares to report their Proceedings and Debates.

As the time approached for the meeting of the convention, Mr. Madison applied his thoughts to preparing a definite sketch of the reforms to be proposed to that body. Virginia, having been the first of the States to move in the matter, he supposed that her delegation would be naturally looked to for some initiatory proposition which might serve as the basis of the deliberations of the convention. His ideas of the nature and extent of the reforms

required were first communicated in a letter of the 19th of March, 1787, to Mr. Jefferson, then in Paris, with whom he kept up, during the whole period of his absence from the country, an unreserved correspondence on all the great questions of American policy. The same ideas were embodied, in a subsequent letter of the 8th of April to Governor Randolph, and repeated, with more precision and fulness of development, in a letter addressed to General Washington on the 16th of April, 1787.

The outline contained in these letters is believed, to use the language of Mr. Madison himself,[1] to be "the earliest sketch on paper of a constitutional government for the Union (organized into the regular departments, with physical means operating on individuals), to be sanctioned by the *people of the States*, acting in their original and sovereign character." It deserves, therefore, by every title, to be brought to the notice of the reader. We give it from the letter to General Washington, as being the latest, and perhaps most carefully considered, expression of the views of the writer, though all of the three versions are essentially the same.

"Having," he said, "been lately led to revolve the subject which is to undergo the discussion of the convention, and formed in my mind some outlines of a new system, I take the liberty of submitting them, without apology, to your eye. Considering that an individual independence of

[1] Madison Debates and Correspondence, vol. II. p. 714.

the States is totally irreconcilable with their aggregate sovereignty, and that a consolidation of the whole into one simple republic would be as inexpedient as it is unattainable, I have sought for some middle ground, which may at once support a due supremacy of the national authority, and not exclude the local authorities, wherever they may be subordinately useful.

"I would propose, as the groundwork, that a change be made in the principle of representation. According to the present form of the Union, in which the intervention of the States is, in all great cases, necessary to effectuate the measures of Congress, an equality of suffrage does not destroy the inequality of importance in the several members. No one will deny that Virginia and Massachusetts have more weight and influence, both within and without Congress, than Delaware or Rhode Island. Under a system which would operate, in many essential points, without the intervention of the State legislatures, the case would be materially altered. A vote in the national councils from Delaware would then have the same effect and value as one from the largest State in the Union. . . .

"I would propose next, that, in addition to the present Federal powers, the national government should be armed with positive and complete authority, in all cases which require uniformity; such as the regulation of trade (including the right of taxing both exports and imports), the

fixing of the terms and forms of naturalization, &c. &c.

"Over and above this positive power, a negative in all cases whatever on the legislative acts of the States, as heretofore exercised by the kingly prerogative, appears to me to be absolutely necessary, and to be the least possible encroachment on the State jurisdictions. Without this defensive power, every possible power that can be given on paper [to the national authority] will be evaded and defeated. The States will continue to invade the national jurisdiction, to violate treaties and the law of nations, and to harass each other with rival and spiteful measures, dictated by mistaken views of interest. Another happy effect of this prerogative would be its control over the internal vicissitudes of State policy, and the aggressions of interested majorities on the rights of minorities and individuals. . . . There has not been any moment since the peace, at which the representatives of the Union would have given an assent to paper money, or any other measures of a kindred nature.

"The national supremacy ought also to be extended, as I conceive, to the judiciary department. If those who are to expound and apply the laws are connected by their interests and their oaths with the particular States wholly, and not with the Union, the participation of the Union in the making of the laws may be possibly rendered unavailing. It seems, at least, necessary that the oaths of the judges should include a fidelity to

the general, as well as local, constitution; and that an appeal should lie to some national tribunal in all cases to which foreigners, or inhabitants of other States, may be parties. The admiralty jurisdiction seems to fall within the purview of the national government.

"The national supremacy in the executive departments is liable to some difficulty, unless the officers administering them could be made appointable by the supreme government. The militia ought certainly to be placed, in some form or other, under the authority which is intrusted with the general protection and defence.

"A government, composed of such extensive powers, should be well organized and balanced. The legislative department might be divided into two branches: one of them chosen every —— years by the people at large, or by the legislatures; the other, to consist of fewer members, to hold their offices for a longer term, and to go out in such a rotation as always to leave in office a large majority of old members. Perhaps the negative on the State laws might be most conveniently exercised by this branch. As a farther check, a council of revision, including the great ministerial officers, might be superadded.

"A national executive must also be provided. I have scarcely ventured, as yet, to form my own opinion, either of the manner in which it ought to be constituted, or of the authorities with which it ought to be clothed.

"An article should be inserted, expressly guaranteeing the tranquillity of the States against internal, as well as external, dangers.

"In like manner, the right of coercion should be expressly declared. With the resources of commerce in hand, the national administration might always find means of executing it by sea or land. But the difficulty and awkwardness of operating by force on the collective will of a State render it particularly desirable that the necessity of it might be precluded. Perhaps the negative on the laws might create such a mutuality of dependence between the general and particular authorities as to answer this purpose; or perhaps some defined objects of taxation might be submitted, along with commerce, to the general authority.

"To give a new system its proper validity and energy, a ratification must be obtained from the people, and not merely from the ordinary authority of the legislatures. This will be the more essential, as inroads on the existing constitutions of the States will be unavoidable."

This outline, it will be hereafter seen, was adopted — with amplifications in matters of detail — by the Virginia delegation, in the resolutions offered by them, through Governor Randolph, at the opening of the convention, and out of which was progressively evolved the Constitution of the Union. There is one feature in it — the suggested negative on State laws — for which Mr. Madison has sometimes, in the heats of party controversy,

been visited with a severity of animadversion that loses sight of the political history of the country. The idea was far from being peculiar to him. It was the opinion of the time, in the infancy of our political experience, not unnaturally suggested by the analogy of the negative held by the head of the empire during our connection with Great Britain.

Such a negative, it was thought, could be intrusted, with far greater safety and propriety, to "an elective and responsible authority within ourselves, than to the distant, independent, and irresponsible authority of the sovereign," under the former system.[1] And if lodged, as Mr. Madison proposed, with the senatorial branch of the government, it would have lost yet more of its invidious character by becoming, according to his conception of it, a supervision of the "whole of the States over each,"[2] exercised through a body in which they were immediately and co-equally represented. The principle was incorporated, to a large extent, into the resolutions of the Virginia delegation; received, as there embodied, the unanimous assent of the convention on one occasion; and was not given up by the convention, as will appear in the progress of this narrative, until another mode of attaining the same end was found and substituted.

It was a postulate, in which all parties were

[1] See Mr. Madison's letter to the author, of the 21st October, 1833.

[2] Letter of James Madison to Mr. Tyler, September, 1833.

agreed, that the national authority was to be paramount and supreme within the constitutional sphere of its action, and that effectual means must be provided to defend and sustain it, within those limits, against all encroachments from the authorities of the States. The serene and almost magic instrumentality by which this is now effected, without shock or jar to any part of the system, — the power of the judiciary to declare all acts, contravening the Constitution of the Union, to be null and void, — was not then recognized and established in the public mind. It was, on the contrary, the subject of litigation and controversy; earnestly denied by some, while passively taken for granted by others.[1] The question, whether viewed in the light of history or of principle, was not free, it must be admitted, from many and very serious difficulties.

In the country which was the exemplar of many of our organic laws, and from which we mainly derived our ideas of civil and political liberty, this power had been invariably disallowed to the judiciary. It was a fundamental maxim, too, of our own institutions, that the legislative, executive, and judiciary departments of the government are separate, independent, and co-ordinate; and that neither

[1] In the Federal Convention, Mr. Mercer, one of the delegates of Maryland, expressed, in strong terms, "his disapprobation of the doctrine, that the judges, as expositors of the Constitution, had authority to declare a law void." Mr. Dickinson, of Delaware, concurred with him, and said, "No such power ought to exist." — See Madison Debates, pp. 1333, 1334. An opposite principle seemed to be assumed by others. — Idem, pp. 783, 1117, 1118, and 1184.

can exercise the powers properly belonging to the other. How, then, it was asked, can the judiciary overrule an act of the legislature, no matter on what ground, without arrogating to itself a power superior to that of the legislature, or intruding, at least, into the province of the legislative department? The weight of these difficulties, it is well known, was felt by Mr. Madison, in common with many other of the most enlightened minds of his day.[1]

In this state of uncertainty and conflict of opinion with regard to the judicial check, no other defensive power but the suggested negative, objectionable as that undoubtedly was, seemed to remain for the consideration of the friends of a stable and efficient government. When the controlling power of the judiciary was finally established by the course of public opinion, as well as by the decisions of the courts, no one more cordially accepted it as the wisest and best solution of the difficult problem which the framers of the Constitution had to deal with, than Mr. Madison did.[2]

[1] In "Observations on Mr. Jefferson's Draught of a Constitution for Virginia," which he addressed in October, 1788, to Mr. John Brown, of Kentucky, he used this language: "In the State constitutions, and indeed in the Federal one also, no provision is made for the case of a disagreement in expounding the laws; and, as the courts are generally the last in making the decision, it results to them, by refusing or not refusing to execute a law, to stamp it with its final character. This makes the judiciary department paramount, in fact, to the legislature, which was never intended, and can never be proper."

[2] See what is said by him in his Introduction to the Debates of the Federal Convention, vol. II. p. 715; and his letter of 1834, in M'Guire's Selection, &c., pp. 350, 351.

The political philosophers of Europe have all concurred in regarding the power, exercised here by the judiciary, of overruling unconstitutional acts of the legislative department, as the unique and distinguishing feature, as well as the essential safeguard, of American institutions. One of them, of justly renowned authority, does not hesitate to pronounce "this provision for preventing either the State legislatures or Congress from overstepping the limits of the Constitution, the very greatest refinement in social policy to which any state of circumstances has ever given rise, or to which any age has ever given birth."[1] It seems, in truth, the realization of a grand conception of Burke, whose luminous and philosophical mind, reaching far beyond the traditional wisdom he was so much accustomed to venerate in the established constitution of his country, gave forth this pregnant lesson for the instruction and benefit of mankind: "Whatever is supreme in a State ought to have, as much as possible, its judicial authority so constituted as not only not to depend upon it, but in some sort to balance it. It ought to give a security to its justice against its power. It ought to make its judicature, as it were, something exterior to the State."[2]

The successive steps by which, amid much contrariety of opinion at first, this great principle of

[1] Lord Brougham's Political Philosophy, vol. III. pp. 335–338. — See also De Tocqueville on Democracy in America, vol. I. c. 6.

[2] Reflections on French Revolution, p. 368.

conservatism was finally established in the theory and practice of American constitutional freedom, are matter of both curious and useful inquiry; and a brief historical deduction of them — essential to a candid appreciation of all contemporary suggestions for upholding the regular action and authority of the laws — can hardly be deemed a digression.

The question first arose for consideration in Mr. Madison's own State, in the year 1782, in a case depending before the supreme court of appeals in Virginia, in which an act of the legislature, relied on by one of the parties, was impugned by the other as being in conflict with the constitution of the State.[1] But, as the court was of opinion that no such conflict between the law and the constitution existed in the case before them, the question then raised and argued, as to the power of the judiciary to treat an unconstitutional act of the legislative department as null and void, passed off without any judicial determination. Two of the judges, however, of the highest eminence, whose names commanded the respect of all America, expressed themselves upon it in language so remarkable for elevation and dignity, that we insert a few sentences of what was said by each of them on the occasion.

Mr. Wythe earnestly and unequivocally asserted the controlling power of the judiciary. Referring to the free discussions which the progress of po-

[1] Commonwealth vs. Caton and others, 4 Call's Reports, pp. 5–21.

litical science had introduced in relation to the respective rights of sovereign and subject, and on the powers of the different departments of government, he said: —

"By these means, tyranny has been sapped, the departments kept within their own spheres, the citizens protected, and general liberty promoted. But this beneficial result attains to higher perfection, when, those who hold the purse and the sword differing as to the powers which each may exercise, the tribunals, who hold neither, are called upon to declare the law impartially between them. For thus the pretensions of each party are fairly examined, their respective powers ascertained, and the boundaries of authority peaceably established. Under these impressions, I approach the question which has been submitted to us: and although it was said the other day by one of the judges, that, imitating that great and good man, Lord Hale, he would sooner quit the bench than determine it, I feel no alarm; but will meet the crisis as I ought, and, in the language of my oath of office, will decide it according to the best of my skill and ability."

After adverting to the particular circumstances of the case before them, and declaring, that, whenever the proper occasion should occur, he would feel the duty of protecting one branch of the legislature against the usurpations of the other, and, feeling it, should fearlessly perform it, he concluded with saying: —

"Nay, more, if the whole legislature — an event to be deprecated — should attempt to overleap the boundaries prescribed to them by the people, I, in administering the justice of the country, will meet the united powers at my seat in this tribunal, and, pointing to the constitution, will say to them, here is the limit of your authority; hither shall you go, but no further."

Mr. Pendleton, the president of the court, with his characteristic gravity and dignity, referred to the intrinsic difficulties as well as delicate bearings of the question, and waived, for the present, the expression of any opinion upon it.

"It has been very properly said on all sides," he remarked, "that the constitution, declaring the rights of the citizens, forming their government, and dividing it into three great branches, legislative, executive, and judiciary, — assigning to each its proper powers, and directing that each shall be kept separate and distinct, — must be considered as a rule obligatory upon every department, not to be departed from on any occasion. But how far this court, in whom the judiciary powers may, in some sort, be said to be concentrated, shall have power to declare the nullity of a law passed, in its forms, by the legislative power, without exercising the power of that branch contrary to the plain terms of the constitution, is indeed a deep, important, and, I will add, tremendous question, the decision of which might involve consequences, to which gentlemen may not have extended their ideas. I am happy in

being of opinion there is no necessity to consider it on this occasion, and still more happy in the hope that the wisdom and prudence of the legislature will prevent the disagreeable necessity of ever deciding it, by suggesting the propriety of making the principles of the constitution the great rule to direct the spirit of their laws."[1]

Thus the question stood until January, 1788, when the legislature of Virginia passed an act imposing upon the judges of the court of appeals the duties of judges of the district courts, which was considered as clearly inconsistent with those provisions of the constitution intended to secure the independence of the judiciary. The court of appeals met at their usual term in the month of April succeeding the passage of the act, and, on that occasion, unanimously adopted a remonstrance, which their president, Mr. Pendleton, was instructed to present to the governor, to be laid before the legislature at its next session. In that solemn manifesto, the *questio vexata* of the legitimate province of the judicial power was met, and firmly and explicitly resolved.

[1] Judge Pendleton, who here approached with caution and reluctance the question of the right of the judiciary, under our republican system, to set aside an act of the legislative department as unconstitutional and void, did not hesitate, as we have heretofore seen, boldly to assert that right against the Parliament of England, under the colonial regime, in the case of the stamp act. — See ante, vol. I. pp. 70, 71. In the one case, he saw the arrogant and wilful usurpation of an irresponsible power, virtually foreign to our laws; in the other, the involuntary error of a co-ordinate department of a common government, emanating from the will, and responsible to the control, of the same constituent authority as himself.

In their remonstrance, the judges say, they found it unavoidable to consider whether the principles of the act of the legislature did not violate those of the constitution; and, "if such violation were apparent, whether they had the power, and it was their duty, to declare that the act must yield to the constitution." The only alternative was to decide those questions, or resign their offices. The latter would have been their choice, if they could have considered the questions in controversy as involving their individual interests only.

"But viewing them," they said, "as relating to their office, and finding themselves called by their country to sustain an important post, as one of the three pillars on which the great fabric of government was erected, they judged that a resignation would subject them to the reproach of deserting their station, and betraying the sacred interests of society intrusted with them; and, on that ground, found themselves obliged to decide, however their delicacy might be wounded, or whatever temporary inconveniences might ensue, and, in that decision, to declare that the constitution and the act are in opposition, and cannot exist together, and that the former must control the operation of the latter. If this opinion, declaring the supremacy of the constitution, needed any support, it may be found in the opinion of the legislature themselves, who have in several instances considered the constitution as prescribing limits to their own powers, as well as those of other departments of government."

After dwelling on the vital necessity of the independence of the judiciary, as "deciding between government and people, as well as between contending citizens," and showing how vain would be the provision of the constitution for securing that independence by the tenure of good behavior, if the legislature could indirectly effect the removal of the judges from office, by compelling them to resign under a burdensome and uncompensated increase of their duties, the remonstrance adds: —

"To obviate a possible objection, that the court, while they are maintaining the independence of the judiciary, are countenancing encroachments of that branch upon the departments of others, and assuming a right to control the legislature, it may be observed, that, when they decide between an act of the people and an act of the legislature, they are within the line of their duty, declaring what the law is, and not making a new law. And, ever disposed to maintain harmony with the other members of government, so necessary to promote the happiness of society, the court most sincerely wish that the present infraction of the constitution may be remedied by the legislature themselves, and thereby all further uneasiness on the occasion be prevented. But, should their wishes be disappointed by the event, they see no other alternative for a decision between the legislature and judiciary than an appeal to the people, whose servants both are, and for whose sakes both were created, and

who may exercise their original and supreme power, whensoever they think proper."

Such was the conclusive force, as well as imposing weight, of this announcement of the opinion of the court, that the legislature at its ensuing session repealed the act pronounced to be unconstitutional, and, in doing so, presented a noble contrast to the spectacle exhibited, about the same time, in another State,[1] where some of the judges, denying the validity of certain high-handed legislative acts passed for forcing paper money into circulation, were summarily ejected from office, and others, willing to be the tools of so shameless a policy, appointed in their places. This decision of the highest tribunal of Virginia, followed by the loyal acquiescence of the legislative department, contributed very largely to the general establishment, as a part of American jurisprudence, of the great principle of judicial control over unconstitutional acts of legislation. The principle was again affirmed, a few years afterwards, by the unanimous judgment of the general court of Virginia,[2] and

[1] Rhode Island.

[2] In the case of Kemper vs. Hawkins, decided in 1793. — It cannot but excite surprise, that such standard writers on American constitutional law as Judges Story and Kent, while professing to trace, with minute accuracy, the successive steps by which this great principle of American jurisprudence was finally established, should have wholly overlooked the decisions pronounced upon it by the courts of Virginia, which, undoubtedly, led the way in the discussion and settlement of the question, upon the grounds on which it now rests with general acquiescence. The traditional influence exerted by that State on all the great questions involving the union of liberty and order, never perhaps appeared with more lustre than in the early wisdom and firmness displayed by her judiciary on the occasions referred to in the text.

was acted upon in several of the circuit courts of the United States, as well as some of the State courts; and finally, in 1801, received the solemn sanction of the supreme court of the United States, in a celebrated case in which Mr. Madison himself, in his official character of secretary of State, was a party upon the record.[1]

All these adjudications were posterior — some of them long posterior — to the suggestion of a congressional negative made by Mr. Madison and his colleagues, as a necessary defence to the central authority of the government against the unconstitutional encroachments of the States. In sitting in judgment on the proceedings of our patriotic ancestors, historical justice and candor alike require that we should judge of them with reference to the state of circumstances existing at the time, and not by bringing them to the test of a comparison with principles, which, however familiar now, were then unacknowledged; which time and experience subsequently brought to light and perfected; and which were established only after having passed through the ordeal of a long and dubious discussion.[2]

[1] Marbury vs. Madison.

[2] The 78th No. of the Federalist, in which Colonel Hamilton argumentatively maintained the power of the judiciary to overrule an act of the legislature as being unconstitutional, and which did not appear until near a year after the meeting of the Federal Convention, shows how much the question was still the subject of controversy and discussion at that time. Five years later, Judge Roane, one of the ablest judicial minds of America, declared, in the case of Kemper vs. Hawkins, that he even *then* doubted, at first, "whether the judiciary was authorized to refuse to execute

The time was now at hand for the meeting of the convention, which had been fixed for the second Monday of May, the 14th day of the month. Mr. Madison, as we have seen, left New York, where Congress was then sitting, on the second day of the month, for Philadelphia, in order to make early arrangements for his accommodation, and to be prepared to enter at once upon his new duties as soon as the convention should assemble.

General Washington, with his accustomed exactness, set off from Mount Vernon on the 9th day of the month, and, performing the journey in his private conveyance, arrived in Philadelphia on Sunday evening, the 13th instant, "amid," as Mr. Madison wrote to a friend[1] at the time, "the acclamations of the people, as well as the more sober marks of the affection and veneration which continue to be felt for his character." He was met by many of his friends at Chester, and escorted from Gray's ferry by the city light-horse. On his arrival in town, the bells rang out a joyous peal of welcome. His first act was to pay his respects to Dr. Franklin, who, at eighty-one years of age, was filling the office of president of the Commonwealth,—as the chief executive magistrate of Pennsylvania was then styled. On the pressing invitation of his old compatriot and fellow-laborer in the scenes of the Revolution,

a law on the ground of its being contrary to the Constitution;" but he finally concurred with the rest of the court, fully and unreservedly, in asserting the power.

[1] Mr. Jefferson.

Mr. Robert Morris, he became an inmate of his hospitable household during the session of the convention.

Judges Wythe and Blair, owing to "the badness of their cavalry," as Governor Randolph wrote to Mr. Madison, were furnished, by his orders, with a "State-boat" to convey them to the head of the Chesapeake Bay, and sailed from Yorktown for their destination on the seventh day of May. They arrived in Philadelphia, as their colleague, Dr. M'Clurg, did also, in full time for the meeting of the convention; making five of the delegates of Virginia present the first day. On the following day Governor Randolph arrived, and two days later Colonel Mason, completing the entire delegation. Virginia and Pennsylvania, however, continued for several days to be the only States present by the requisite number of their delegates in the convention; a spell of tempestuous weather having retarded many of the delegates of the other States on their journey.

On the 25th day of the month, seven States, being a quorum of the thirteen, were in attendance, and organized the convention by the unanimous call of General Washington to the chair of president of the body. After the appointment of a committee, of which Mr. Wythe was the chairman, to prepare rules for conducting the business of the convention, they adjourned to Monday, the 28th instant; when the intermediate arrival of the delegates of Massachusetts and Con-

necticut made the number of States present nine, which was increased, a few days afterwards, to eleven by the attendance of delegates from Georgia and Maryland. New Hampshire did not appear by her delegates till a considerably later period; and Rhode Island declined to send delegates altogether.

The different States followed the example of Virginia in choosing their most distinguished citizens to represent them in the convention. Pennsylvania, at whose capital the convention was to assemble, elected the most numerous delegation of any of the States, — consisting of eight members, all men of national reputation, one of world-wide renown. Four of them were signers of the Declaration of Independence; the others had been conspicuous, at various periods, by their services and talents in the Congress of the confederation.

At the head of this distinguished delegation was fitly placed the name of Franklin. All things considered, he was the most remarkable man of the age. Born in comparative obscurity; bred to a mechanical employment; without patronage, and without education except that which, by a marvellous husbandry of his time and mental resources, he bestowed upon himself, — he came to stand before kings and parliaments and learned assemblies, in the native majesty of superior intellect and genius; and the great and the wise of all lands did him homage. The friend and correspondent of Hume, of Robertson, of Kames,

of Shipley, of Buffon, of Mably, of Vergennes, of Condorcet, of La Rochefoucauld, — courted and flattered by Voltaire, honored by the warm and cordial applause of Chatham and Burke,[1] — elected, by an eager rivalry of adoption, into all the learned societies of Europe, as well as of his own country, his blended services to science and freedom were immortalized in that pregnant line of classic antithesis which the genius of Turgot annexed inseparably to his name, —

"Eripuit cœlo fulmen, sceptrumque tyrannis."

Although he had never made the theories and forms of political organization the object of his special study, and is chargeable, therefore, with one or two fanciful notions in government, springing from too narrow an induction of illustrative facts, — as in the instance of his preference for

[1] Lord Chatham, in repelling in the House of Lords, on the 1st of February, 1775, an insinuation made by the Earl of Sandwich that his plan of conciliation with America proceeded from Dr. Franklin, while declaring that the plan was all his own, used this memorable language with regard to Franklin: "If," said he, "I were the first minister of this country, and had the care of settling this momentous business, I should not be ashamed of publicly calling to my assistance a person so perfectly acquainted with the whole of American affairs as the gentleman alluded to, and so injuriously reflected on; one, I am pleased to say, whom all Europe holds in high estimation for his knowledge and wisdom, and ranks with our Boyles and Newtons; who was an honor, not to the English nation only, but to human nature."

In a public letter addressed to the Marquis of Rockingham on the 6th of January, 1777, Burke, speculating on the objects of Dr. Franklin's visit to France where he had then recently arrived, without the nature of his mission being generally understood, speaks of him thus: —

"This I take to be his errand; for I can never believe that he is come thither as a fugitive from his cause in the hour of its distress, or that he is going to conclude a long life, *which has brightened every hour it has continued*, with a dishonorable flight."

a single legislative assembly,—yet his profound insight into the principles, good and bad, of human nature, made him an almost infallible judge of all those points in which the practical operation of government is most influenced by the selfish interests and passions of mankind. With this was joined the rare and felicitous advantage of a personal observation extending over near a century — fruitful in great events — of the world's history,

> Till old experience did attain
> To something like prophetic strain.

While to younger men of vigorous minds and ample attainments was assigned the active lead in the business of the convention, to him was accorded, by general consent, the authority and respect of the Nestor of the assembly.

Robert Morris was, like Franklin, *suæ fortunæ faber*. A native of England, he came to America at the early age of thirteen, and grew up with the rising fortunes of the country, into which he was thoroughly incorporated by the "second nature" of his youthful impressions, education, and connections. On attaining to manhood, he became a partner in one of the largest, as well as oldest, commercial houses of America.[1] By the extensive operations of foreign trade, his mind was formed to large and liberal views, and to habits of promptitude, energy, and decision. The success of his enterprising industry, and the excellence of his moral

[1] Charles and Thomas Willing, of Philadelphia.

character, raised him by degrees to a high social position; and in 1775, at the age of forty-two years, he was elected by the legislature of Pennsylvania one of the representatives of that State in the continental Congress.

His experience in business caused him to be placed on all the important committees of that body, — especially the secret committee charged with procuring military supplies from abroad, the committee of finance, and the committee of commerce. He continued in Congress, by successive appointments, until the close of the year 1778, — long enough to have affixed his signature to the articles of confederation, ratified by eleven of the States in that year, as he had previously done to the Declaration of Independence in 1776. In 1781, while a member of the legislature of Pennsylvania, and at a period when the national finances had fallen into a state of the most deplorable derangement, he was called by the unanimous voice of Congress to fill the arduous and important office, just created, of superintendent of finance.

With a courageous patriotism which did him infinite honor, he entered upon the herculean labor. Never hesitating to bring his own credit — which was eagerly accepted, while that of the government was often unavailable — in aid of the public resources, and enforcing, in a tone of earnest and commanding energy, the obligations of the States, as well as individuals, to the Confederacy, he contributed largely, by the vigorous co-operation of his

department, to the triumph of the national arms, and for his signal services received the thanks and applause of the country and her allies. He was now called from his retirement to take part in the framing of a permanent Constitution for the republic. In the organization of the new government, he was invited by the president, Washington, to take the important post of secretary of the treasury, which his impaired health compelled him to decline; and he accepted, from the partiality of his State, the less laborious, though not less honorable, position of senator in the Congress of the United States, which he continued to fill for six years.

Associated with Franklin and Morris, in the delegation of Pennsylvania, was James Wilson, of whom Washington, writing to a friend immediately after the adjournment of the convention, said, "there was no abler or honester man in that body."[1] A Scotchman by birth, he brought to America, in the early maturity of his powers, a congenial spirit of freedom, and a mind disciplined by the liberal studies of the universities of Edinburgh, Glasgow, and St. Andrews, of each of which he had been an inmate. Next to Mr. Madison, he was perhaps the member of the convention the most thoroughly prepared, by profound and systematic researches in the history and science of government, for the labors of the convention. The range of his erudition was such as to attract the attention of the Marquis de Chastellux, — himself

[1] Letter to David Stuart, Esq., 17th October, 1787.

an accomplished scholar and distinguished political writer, — who, in his visit to Philadelphia in 1780–81, speaks with admiration of Mr. Wilson's library, as containing "all our best authors on law and jurisprudence. The works of President Montesquieu and of the Chancellor D'Aguesseau hold the first rank among them, and he makes them his daily study." [1]

No man was more deeply imbued with the love, as well as the learning, of constitutional liberty than he was. Upon the mooted question of the true constitutional relation between the colonies and the mother country, he took the most advanced position on the American side of the controversy, and contended that the British Parliament had no authority to legislate for the colonies in any case whatever, — the only tie of political connection which bound them to the empire being that of common allegiance to one and the same sovereign.[2] It is a coincidence, worthy of observation, that the same theory was put forth by himself and Mr. Jefferson [3] at precisely the same period, — August, 1774, — without any acquaintance or opportunity of communication with each other.

[1] See Travels of Marquis de Chastellux in North America, p. 109.

[2] The pamphlet of Mr. Wilson here referred to, entitled "Considerations on the Nature and Extent of the Legislative Authority of the British Parliament," was specially noticed by Lord Mansfield, in the House of Lords, as a production of "one of the most able American writers" (supposing it to be Dr. Franklin), and distinguished by "the fullest and clearest investigation of the subject." — See Franklin's Works, by Sparks, vol. IV. p. 409.

[3] In his "Rights of British America."

In the convention of Pennsylvania, assembled in January, 1775, of which he was a member, he proclaimed the boldest doctrine of resistance to British usurpation; declaring that, "when the King, forgetting his character and his dignity, has stepped forth and taken part in such iniquitous conduct as has been described," he forfeits the protection of the constitutional maxim, that the King can do no wrong, and thenceforward shares the responsibility of his ministers, to whose level he has descended.[1] In the course of the same year, he was elected one of the delegates of Pennsylvania to the Continental Congress, and soon rose to an eminent rank in that body. On the 24th of January, 1776, he was appointed one of a committee of five "to prepare an address to the inhabitants of the united colonies," in answer to the King's speech of 26th October, of the previous year, which had then recently arrived in America, and, by its tone of vindictive denunciation against the colonies, excited a universal feeling of indignation throughout the continent. The report of the committee, which was drawn by him, contained an able and spirited justification of the colonies, and of their public authorities, against the arraignment of the King's speech; but, the questions it discussed being superseded by the rapid development of other and more urgent issues, it was never called up for action.[2]

[1] See Wilson's Works, vol. III. p. 268, 269.

[2] A distinguished American historian appears to have been led into

Upon the first division in Congress on the Declaration of Independence, Mr. Wilson voted with Dr. Franklin and Mr. Morton for it, in opposition to a majority of his colleagues, who had not yet

error by his authorities with regard to the intention and character of the report here referred to. He says: "The day after the appearance of 'Common Sense,' Wilson, to arrest the rapid development of opinion, came to Congress with the King's speech in his hand; and, quoting from it the words which charged the colonists with aiming at a separation, he moved the appointment of a committee to explain to their constituents and to the world the principles and grounds of their opposition, and their present intentions respecting independence." — See Bancroft's History of the United States, vol. VIII. p. 242. The author afterwards (idem, p. 313) speaks of the report "as a very long, ill-written draught of an address of Congress to their constituents, in which they were made to disclaim the idea of renouncing their allegiance," and which, when read, "was listened to with disgust."

Mr. Madison, in a commonplace book, designed to furnish, from the original files of Congress, a documentary history of its proceedings with regard to the articles of confederation, *projets* of treaties to be proposed to foreign powers, and the Declaration of Independence, has transcribed at length the address of Mr. Wilson, here referred to, followed immediately by Mr. Jefferson's original draft of the Declaration of Independence. He introduces his copy of the address with this remark: "This address was drawn by Mr. Wilson, who informed the transcriber that it was meant to lead the public mind into the idea of independence, of which the necessity was plainly foreseen by Congress; but, before the address could be carried through Congress, the language became evidently short of the subsisting maturity for that measure, and the address was in consequence dropped."

This account of the purpose and intention of the address is fully corroborated by its whole tenor and context.* Every principle with regard to the legitimate origin and end of government, on which the Declaration of Independence was founded, is laid down in the address. It boldly justifies the resistance of the colonies by arms; and, in noticing successively the various charges of the King's speech, it says emphatically, with reference to two of the leading ones: "We deem it an honor to 'have raised troops and collected a naval force,' and clothed with the authority of the people, from whom all legitimate authority proceeds, 'to have exercised legislative, executive, and judicial powers.' For what purposes were these powers instituted? For your [addressing their constituents] safety and happiness.

been able to make up their minds to so bold and irrevocable a step. He continued in Congress, under three successive annual appointments, until the close of the year 1777; was again elected in 1782–83; and finally, in 1785–86, was a member for the fifth time. After the adoption of the new Constitution, — in the formation of which he bore a most distinguished part, — he was appointed by Washington one of the first judges of the supreme court of the United States; which post he held and adorned until his death in 1798. After his death, the lectures on law, delivered by him in

You and the world will judge whether those purposes have been promoted by us, or by those who claim the powers which they charge us with assuming."

While denying, as all the public bodies in America had invariably done, the truth of the charge made in the King's speech, that the colonies were carrying on the war "for the purpose of establishing an independent empire," and recognizing the mutual benefits of a constitutional connection honestly maintained, the address concludes with these significant intimations: — "Let neither our enemies nor our friends make improper inferences from the solicitude we have discovered to remove the imputation of aiming to establish an independent empire. Though an independent empire is not our wish, it may, — let your oppressors attend, — it may be the fate of our countrymen and ourselves. It may be in the power of your enemies to render independency or slavery your and our only alternative. Should we, — will you, in such an event, hesitate a moment about the choice?" "That the colonies may continue connected, as they have been, with Britain, is our *second* wish: our *first* is, that America may be free."

Let the date of this address be considered (13th February, 1776) with the well-known slowness and reluctance of the American people to abandon the hope of ultimate reconciliation, and that even as late as the 8th of June, according to Mr. Jefferson (see Writings of Jefferson, vol. i. p. 14), there were as many as six States "not yet matured for falling from the parent stem," and no one can find it deficient in a true American spirit. As to its being "ill-written," it will best speak for itself; and that the reader may form a candid judgment upon the whole matter, we have subjoined some farther extracts of the address in the Appendix.

the college of Philadelphia, in the years 1790, 1791, and 1792, were published. They are a masterly exposition of the principles of free government in the broad and attractive lights of history and philosophy, and will remain to after-times a noble monument of the author, — of his genius, learning, and manly sentiments of liberty.

Among the members of the Pennsylvania delegation who were signers of the Declaration of Independence, was George Clymer. He was born in Philadelphia, and trained by a liberal course of private studies, as well as by the usual education in the public institutions of that city, for a sphere of extensive usefulness. A merchant by profession, his tastes led him rather to the pursuits of literature and public life. He embraced with zeal the cause of the colonies in the controversy with the mother country, and was conspicuous in the earliest movements of resistance to the encroachments of the Crown and Parliament. He was an earnest, working member of the Congress of 1776, re-elected to that body in 1777, and again in 1781 and 1782. At the close of the revolutionary struggle, he returned to private life; but was soon called forth from his retirement to a seat in the legislature of the State, where he was distinguished by his useful labors, and especially by his successful exertions in favor of that amelioration of the ancient penal code, of which Pennsylvania set the first example to her sister States.

He was now deputed to the Federal Convention

to assist in the establishment of a more perfect system of government for the Union; and was afterwards a member of the first Congress that met under it, in which body he strove, with an enlightened and catholic public spirit, to lay deep the foundations of a just, wise, and sober republican policy. He was the model of a useful and virtuous citizen, as well as of an upright and independent statesman; a promoter of all good works; an encourager of the arts; a zealous patron, without being a practitioner of agriculture; and acquired by his unbending integrity a popularity and public esteem which he would never stoop, under any circumstances, to court by unworthy compliances with popular prejudice or delusion.

One of the most active and distinguished, as one of the youngest, of the Pennsylvania delegates, was Gouverneur Morris. He was a native of New York, where his family for several generations had enjoyed a large share of consideration, and borne public trusts of high importance. Bred to the bar, he soon rose to eminence in his profession; and, in the stormy times which ushered in the contest for national independence, he distinguished himself by the early display of his energy and talents in the provincial assemblies of his native colony. In the autumn of 1777, not yet twenty-six years of age, he was elected one of the delegates of the State of New York to the Continental Congress. During his service in that body, of which he was a member until the close of the

year 1779, he took a most active and prominent part in all its proceedings. He was chairman of several of the most important committees relating to the organization of the army, the national finances, and the conduct of foreign negotiations; with all of which great interests he acquired a thorough and masterly familiarity,— proof alike of inexhaustible industry and a rare versatility of talents.

On the expiration of his service in Congress, he established himself in Philadelphia in the practice of his profession; and in 1781, when Mr. Robert Morris was appointed superintendent of finance, he was invited by that gentleman, with whom he had long held very intimate relations of friendship,— though without the tie of consanguinity which their common name might seem to imply,— to assist him in the arduous and complicated business of his department. He continued in that situation for three years, giving new proofs of the fertility of his genius and the powers of his industry. In 1787, when the convention was called for the revision of the articles of confederation, being still a resident of Philadelphia and engaged in the practice of his profession there, he was chosen a delegate to that body for the State of Pennsylvania.

Gouverneur Morris was, undoubtedly, one of the most extraordinary men of his time, combining with a vivid imagination and ardent temperament the triple faculty of close reasoning, sagacious ob-

servation, and indefatigable application. He thus became famous as a politician, a financier, an orator, a scholar, a wit, a man of business, and a man of social accomplishments. Shortly after the adoption of the new Constitution, he went to Europe; where during a residence of ten years amid the stirring scenes produced by the French revolution, — two years only of the time in a public capacity, as minister of the United States at Paris, — he made himself as much at home in the courts, cabinets, and social circles of the Old World, as he was amid the native and familiar associations of his own country. On his return to America, he settled on his paternal estate near the city of New York, and was soon chosen one of the senators of that State in the Congress of the United States. With three years' service in that body, illustrated by his usual display of talent and eloquence, he closed his varied and eventful connection with the employments of political life.

General Mifflin was another of the Pennsylvania delegates, whose public career had been eminently brilliant and distinguished. He was a member of the first Continental Congress in 1774; and, although he gave proofs in that assembly of high civic capacities, the ardor of his temperament impelled him to a more active field of duty. In 1775, he joined the army of Washington at Boston with a regiment raised mainly by the spell of his patriotic eloquence, — a gift he possessed in a very rare degree, and which was employed by

him with great effect, on several critical occasions in the history of the country, for the advancement of its independence or the support of its laws. On his arrival in Boston, he was invited by the commander-in-chief into his family as aide-de-camp; and was afterwards made by him quartermaster-general. In 1776, he was appointed by Congress brigadier-general; in 1777, major-general; and, in 1778, a member of the Board of War.

In all these various capacities, he rendered important services to the cause of national independence, — leaving nothing to regret, in his long and active career, but that the impatience of his temper prevented him from duly appreciating the cautious and long-sighted combinations of the commander-in-chief, and drew him, for a time, into the vortex of a party, that, in Congress as well as in the army, was disposed to cavil at a generalship, which, not exempt from occasional disasters, was proudly vindicated from every criticism by the ultimate and unerring test of time. At the close of the war, General Mifflin was called again into political life by the confidence of his countrymen. He was elected, in the autumn of 1782, to the Congress of the confederation; and, as presiding officer of that body, in the grand and august scene of the resignation of his commission by the commander-in-chief, delivered the noble address to him, which, recognizing his great deeds and rendering homage to his exalted character in strains of eloquence never surpassed, happily effaced the

recollection that he had once entertained sentiments of a different kind.[1]

In 1785, General Mifflin was returned a representative to the legislature of the State, of which he had often before been a member; and was the presiding officer of its popular branch, when he was called to take his seat in the Federal Convention. Soon after the adjournment of the convention, he succeeded Dr. Franklin in the office of president of the supreme executive council of the Commonwealth. In 1790, he was member and presiding officer of the convention that framed the new constitution of Pennsylvania, and was the first governor elected under it. This office he continued to fill for nine busy and eventful years; dying a few weeks after his retirement from it, and thus closing, with hardly an interval of repose, a life that had been one unbroken series of public responsibilities and public honors.

The two remaining members of the Pennsylvania delegation, though men of eminent abilities in their respective lines, call for less extended notices, as their political careers were comparatively of brief duration. Mr. Ingersoll was a native of Connecticut, where he received an accomplished education at Yale College, and came to Philadelphia, a young man, to engage in the practice of the law. He soon took his place in

[1] This address was from the pen of Mr. Jefferson, who was chairman of the committee of arrangements appointed by Congress for the occasion.

the front rank of the profession there, at a time when the bar of Philadelphia, by universal acknowledgment, stood at the head of the profession in the United States. Towards the close of the war of the Revolution, he was, for a year or two, member of the Continental Congress; and was now pointed out by his reputation for talents, as well as by his patriotism and public spirit, for a participation in the labors of the general convention. He never afterwards appeared in public life, although the attachment and confidence of the political party, with which he was associated, caused him to be selected in 1813 as their candidate for the vice-presidency of the United States. He filled successively, and with deserved public respect, the offices of attorney-general of Pennsylvania, and of judge of the Federal district court for the same State.

Mr. Fitzsimmons was an eminent merchant of Philadelphia, whose mind was enlarged by liberal views of public affairs. He had been a member of the Congress of the confederation in 1782 and 1783; and the reputation he acquired in that body for judgment and extensive practical knowledge naturally recommended him for a seat in an assembly charged with the reconstruction of the government on a more solid and substantial basis. The useful part he bore in the deliberations of the convention added to his former reputation; and, in the three first Congresses that assembled under the new Constitution, of all of which he

was a member,— closing his public life with the third,— he was invested with a sort of oracular authority on all questions of legislation connected with the finances or commercial relations of the country.

However grateful the office of reviewing the shining merit-roll of the early age of the republic, our limits will permit us merely to glance at the distinguished characters that composed the delegations of the rest of the States, and to do but little more than to cite, in connection with their names, the various public employments, both before and after the convention, which attested their talents, virtues, and usefulness.

Of the two gentlemen who represented the State of New Hampshire in the convention, John Langdon was early distinguished by his ardent spirit of liberty and his manly support of the cause of independence. He was a member of Congress in 1775, and was afterwards actively engaged, during the whole course of the contest, in animating and directing the public councils of his State. In 1785, he was president of the State; and the following year elected again a delegate to Congress, in which position he was, when appointed to the convention. He was one of the first Senators of New Hampshire in the Congress of the United States elected under the new Constitution; and, being made president of the Senate, it devolved on him, in that character, to notify to General Washington officially his election to the chief magistracy of the

Union. He continued, by successive elections, a member of the Senate of the United States for twelve years, — from 1789 to 1801; was governor of his State from 1805 to 1808; and again elected to that office in 1810 and 1811, — filling up the measure of a long life with useful and distinguished services to his country.

His colleague, Nicholas Gilman, was not old enough to have borne an active part in the scenes of the Revolution. But his merits early drew upon him the notice of his countrymen; and in 1786, at the age of twenty-four years, he was returned, with Mr. Langdon, a delegate to the Congress of the confederation. After the adjournment of the convention, he resumed his seat in Congress, and continued a member of that body until the new government went into operation. He was elected four successive terms — from 1789 to 1797 — a member of the House of Representatives, under the Constitution which he had assisted to form; and was, subsequently, for nine years — from 1805 to 1814 — a member of the Senate of the United States.

The State of Massachusetts was represented in the convention by four delegates, each of whom acted a conspicuous part in the history of the country. Elbridge Gerry, the senior delegate, was a signer of the Declaration of Independence, and continued an active and influential member of the Continental Congress, with hardly any intermission of his labors, for four years and a half; and,

although particular circumstances then interrupted his personal attendance on Congress for the space of three years, such was the cordial esteem and attachment of his constituents, that the legislature of Massachusetts, refusing to accept his repeated resignations, continued his name in the list of her delegates to Congress during the whole of that interval. He resumed his seat in Congress in 1783, and participated, with his characteristic zeal and energy, in all its labors till the close of the year 1785, — making a continuous representative tenure, then unprecedented, of ten years in the councils of the Confederacy.

He was a member of the House of Representatives in the two first Congresses under the new Constitution, and took a leading part in all the legislative deliberations relating to the administrative organization or future policy of the government. In 1797, at a crisis of extreme complication in the foreign relations of the country, he was appointed by President Adams joint commissioner, with General Pinckney and Judge Marshall, to the French Republic. In 1810 and 1811, on the eve of the second war with Great Britain, he was elected to the important position of governor of the State of Massachusetts; and, in 1813, *flagrante bello*, amid the violence of foreign and domestic contentions, he was chosen vice-president of the United States, and, as such, presiding officer of the Senate. It was thus his singular fortune, by the confidence of his fellow-citizens, to have borne a high official agency in two

great national contests with the same power, — occurring at an interval of near forty years, — one for the independence, the other for the essential rights, of his country.

The next-named member of the Massachusetts delegation, Nathaniel Gorham, although he had long exercised a leading influence in the councils of the State, did not become a member of the Federal Congress until 1782–83. He was again appointed to that body in 1785–86; and when Mr. Hancock, who, on his re-election to Congress, had been again chosen its presiding officer, was compelled by ill-health to relinquish the duties of the chair, Mr. Gorham succeeded him as president of Congress. From that position he passed into the Federal Convention, where, as well as in Congress, he gave proofs of a superior understanding, and of a masculine and decided character. His public career terminated with his life, a few years after the adoption of the Constitution.

Mr. Rufus King, another member of the delegation, came into public life with all the advantages of thorough culture and systematic discipline. Too young to have taken a prominent part in the scenes of the Revolution, he pursued his studies with but little interruption until he was admitted to the bar, in 1780. In 1784, he was appointed one of the delegates of Massachusetts, which was his native State, to the Congress of the confederation, and continued a member of that body until the meeting of the convention in 1787. In both of those

bodies he was distinguished by his activity, his eloquence, and the extent of his attainments.

Removing to New York, after the adoption of the Constitution, he was one of the Senators first chosen by that State to the Congress of the United States under the new government. In 1796, he was appointed by President Washington minister of the United States to Great Britain, where he continued to represent the country during the whole of Mr. Adams's administration, and two years of Mr. Jefferson's. In 1813, he was again elected a Senator in Congress for the State of New York, and, in 1820, the appointment was renewed for another term; at the expiration of which, he was sent by President Adams, the younger, on a second mission to Great Britain, from the duties of which he was soon constrained by declining health to withdraw. Whatever difference of opinion may arise on some incidents in the long public career of Mr. King, the praise of a high order of ability, set off by dignity and courtesy, belongs to him by an unquestioned title, in the judgment of all.

The last-named member of the delegation was Caleb Strong, who, like his colleague, Mr. King, had the advantage of a thorough preparatory train ing for the practice of the law, in which he rose to much eminence. His activity and talents, during the earlier part of his career, found their exclusive employment within the limits of his own State, where he was successively elected to various impor-

tant public stations. His first connection with the national service was as member of the Federal Convention of 1787. After the adoption of the Constitution, he was chosen a member of the Senate of the United States for the State of Massachusetts, and continued in that body for eight years, from 1789 to 1797. He was afterwards governor of his State from 1800 to 1807, and again from 1812 to 1815.

Connecticut was represented in the convention by three delegates of great distinction. Dr. William Samuel Johnson, the first named on the list of the delegation, was an eminent scholar, lawyer, and orator. After filling many posts of honor and usefulness at home, he was appointed in 1766 special agent of the Colony in England, for the purpose of arguing before the King's council a great land cause, in which the Colony was deeply interested. During his residence in England, the University of Oxford conferred on him the degree of Doctor of Civil Law, and he was also elected a member of the Royal Society. On his return to America in 1771, he was appointed one of the judges of the superior court of Connecticut. In 1784–85 and 1785–86, he was a delegate of that State in the Congress of the confederation. He was one of the first Senators of the State in the Congress of the United States under the new Constitution. In 1791, he finally retired from political life; and soon afterwards accepted the situation of president of Columbia College, in the State of New

York, which he continued to fill, for many years, with great dignity and usefulness, and with universal respect.

Roger Sherman, whose name stood next on the list of the Connecticut delegation, justly ranks among the remarkable men of his times. Bred, like Franklin, to a mechanical employment, and without the advantages of early education, he supplied, by earnest industry and a thirst for knowledge, the want of artificial aids. Appropriating to diligent self-culture every moment he could gain from a laborious calling, he was enabled, at the age of thirty-three, to enter, with respectable preparations, on the practice of the law. From that period, he advanced, with a firm and steady step, in the path of public honors and usefulness. Filling successively various offices, legislative and judicial, to which he was called by the voice of his countrymen, he was appointed, in 1766, a judge of the superior court of Connecticut, — a post which he held, with unvarying public confidence and support, for twenty-three years.

He was elected to the first Continental Congress in 1774, and continued a member of that body, without intermission, for seven years. It is evidence sufficient of the high estimation in which he was held by his colleagues, that he was chosen, with Jefferson, Adams, Franklin, and Livingston, to prepare the Declaration of Independence, and that he was also appointed a member of the committee which was charged with framing the original arti-

cles of confederation. After the adoption of the new Constitution, he was chosen a member of the House of Representatives for the first congressional term; at the expiration of which he was transferred to the Senate of the United States, where, in 1793, he closed, in the fulness of years, his long, useful, and honored career.

The third member of the delegation of Connecticut was Oliver Ellsworth. More fortunate than his colleague, Mr. Sherman, whose successful career is said to have been the special object of his youthful emulation,[1] Mr. Ellsworth had the benefit of a very finished education, and reaped the advantages of it in an early and rapid course of promotion. The junior of Mr. Sherman by twenty-four years, he was a member of the Continental Congress with him in 1777; was soon after placed by his side upon the bench of the superior court; and when, in 1789, the members of the first Congress under the new Constitution were to be chosen, while Mr. Sherman was elected to the House of Representatives, Mr. Ellsworth was made a member of the Senate of the United States. In 1796, he was appointed by Washington chief-justice of the United States; and, in 1799, was sent by President Adams, with Governor Davie, of North Carolina, and Mr. Vans Murray, of Maryland, then minister resident at the Hague, on the second errand of pacification to the French Republic.

[1] See letter of John Adams to J. Sanderson, dated 19th November, 1822.

Having, with his colleagues, succeeded in the accomplishment of the mission intrusted to them, he withdrew from all farther public employment; leaving behind him the reputation of superior talents, improved by cultivation, disciplined by study, and sustained by untiring industry and perseverance.

Of the delegation of New York, the most distinguished member, undoubtedly, was Alexander Hamilton. Of his eminent career, civil and military, we have already had occasion to speak.[1] His high abilities, universally acknowledged, could not fail to place him in the first rank of every assembly to which he belonged. His senior colleague, Robert Yates, had been zealous and active in the cause of the Revolution; held various public posts under the authority of New York, during the progress of the contest; in 1777, was a member of the convention which formed the constitution of that State; and, the same year, was made one of the judges of its supreme court, which office he held at the time of his appointment to the Federal Convention. In 1790, he became chief-justice of the State. Mr. Lansing, the remaining dele gate, had been for three years a member of the Congress of the confederation, when he was chosen, with Judge Yates and Colonel Hamilton, to represent New York in the convention. He subsequently became chancellor of the State.

New Jersey had in the convention a deputation

[1] Vol. I. pp. 305–307, 433–434, and 437–443.

of four members; at the head of which was William Livingston, then governor of the State, as he had already been, by successive annual elections, for eleven years, and continued to be three years longer until his death in 1790. He was a man of learning and ability, distinguished as a vigorous and able writer of thorough Whig principles on the side of the Colonies in all the controversies with the mother country which terminated in the Revolution; and had been a leading and active member of the three first Continental Congresses in 1774, 1775, and 1776.

He had for his colleagues David Brearly, chief-justice of the State; William Churchill Houston, recently one of the delegates of the State in the Congress of the confederation; and William Patterson, who had been for ten years the attorney-general of New Jersey. Mr. Patterson was subsequently chosen one of the first senators of the State in the Congress of the United States; was then governor of the State for three years; and, in 1794, was appointed by President Washington one of the judges of the supreme court of the United States, which office he continued to fill with dignity and ability until his death in 1806. To this list of delegates was added, at a later day, Jonathan Dayton, who became afterwards well known in the political history of the country by his activity and talents; being a member of the House of Representatives of the United States from 1791 to 1799,—the two last years of the

time its speaker,—and, from 1799 to 1805, a Senator of the United States.

The State of Delaware was represented in the convention by men of great ability and experience. Chief among them was John Dickinson, who, whether regard be had to his learning and eloquence, to his genuine love of country, to his spotless purity and dignity of character, or to the masterly productions of his pen in defence of American rights, must ever stand in the foremost rank of the patriots and statesmen of the New World. Although the conscientious inflexibility of his mind would not allow him to follow the example of some other gentlemen, who, with the same views he entertained of the prematurity of the Declaration of Independence, yet subscribed their names to it, no man, from the moment the declaration was adopted, sustained it more unreservedly or more boldly in action than he did, at every hazard, both in the field and in council. The temporary eclipse of his popularity, occasioned by his refusing to join in the Declaration of Independence, speedily gave way before the lustre of his patriotism and courage. He was soon re-instated in Congress;[1] afterwards elected president of the Commonwealth of Pennsylvania three successive years, immediately preceding the induction of Dr. Franklin into the same office; and closed his great public career with the labors of the general convention as a delegate

[1] Pretermitted by Pennsylvania in July, 1776, he was elected by Delaware, on the 8th of November of the same year, and again in 1778–79.

from Delaware, of which State he had then become a citizen.

Of the colleagues of Mr. Dickinson, the next to him in years and renown was George Read, who, like Mr. Dickinson, was bred to the bar, and early acquired distinction in his profession. He was, for twelve years, attorney-general of the province of Delaware; was elected a delegate to the first Continental Congress in 1774; and continued a member of that body for several years, having affixed his signature to the Declaration of Independence in 1776. After an interval of two or three years passed in the administrative or legislative service of his own State, he was appointed by the Congress of the confederation one of the judges of the court of appeals in admiralty cases, and still occupied that position when he was elected a delegate to the Federal Convention. Upon the adoption of the Constitution, he was chosen one of the first senators for the State of Delaware in the Congress of the United States; and, in 1793, was made chief-justice of the State.

With these two gentlemen were associated Gunning Bedford, jr., who had been a delegate in the Congress of the confederation the preceding year; and Richard Bassett, who, upon the adoption of the Constitution, was elected a senator of the United States, and, a few years later, governor of the State of Delaware.

Of the delegates of the State of Maryland in the convention, the first-named, James M'Henry,

had been three years a member of the Congress of the confederation; and was appointed secretary of war by Washington towards the close of his presidency, which post he continued to hold during the greater part of the administration of the elder Adams. Daniel of St. Thomas Jenifer had been a member of the Continental Congress as early as 1778–79; and Daniel Carroll was a member of the Congress of the confederation for three years previous to the convention, after which he was elected a member of the House of Representatives under the new Constitution.

One of the Maryland delegates, Colonel John Francis Mercer, was a native of Virginia; distinguished in early life by his gallant military career; and was elected from that State to the Congress of the confederation in 1782–83 to supply the place of Edmund Randolph. He acquired in that body the reputation of a man of talent and of a lofty public spirit. Having removed to Maryland, he was now appointed one of her delegates in the Federal Convention; and became, under the new Constitution, one of her representatives in the Congress of the United States, and afterwards governor of the State. The remaining delegate, Luther Martin, was a lawyer of celebrity, a member of the Congress of the confederation in the year 1783–84, and had been many years attorney-general of the State of Maryland at the time of his appointment to the convention.

The delegation of North Carolina, like that of

Maryland, was composed of five members. The senior member, Alexander Martin, was a man of education and great weight of character. He had been an officer of the revolutionary army during a considerable period of the war. He then engaged in the civil service of his State, and was its governor several years before his election to the convention. He was again governor after the convention; and was subsequently a senator of the United States for six years, from 1793 to 1799.

His colleague, William Richardson Davie, was a native of England; came to America very young, and completed his education at Princeton College, in New Jersey. He embarked with zeal in the cause of his adopted country, and was distinguished, through the whole course of the war of Independence, by his gallantry and military enterprise. On the return of peace, he devoted himself, with equal energy, to civil pursuits; and, by the successful display of his talents, both at the bar and in the legislative councils of North Carolina, he attained that early eminence which led to his selection as one of her delegates in the general convention. At a later period, he was made governor of the State; and it was, while filling that station, he was appointed, as we have seen, a joint commissioner, with Chief-justice Ellsworth and Mr. Vans Murray, to the French Republic.

The third member of the delegation, William Blount, had been one of the delegates of North

Carolina in the Congress of the confederation in 1782, and again in 1786. After the adoption of the Constitution, when a provisional government was organized for the territory south of the river Ohio, he was placed at the head of it by President Washington; and was subsequently elected one of the first senators of the new State of Tennessee in the Congress of the United States. The fourth delegate, Richard Dobbs Spaight, was a native of Ireland, educated in one of the universities of Scotland. His steadiness and zeal in the cause of America soon won the hearts of his new compatriots. He was elected to the legislature of North Carolina; and, by its favor and confidence, was made, in 1783 and 1784, one of the delegates of the State in Congress, which, by a natural progression, paved the way for his appointment to the convention. After a few years, he was again a member of the legislature of the State; was then made governor; and finally, from 1798 to 1801, was a member of the House of Representatives in the Congress of the United States.

The last-named member of the delegation, Hugh Williamson, was a man remarkable for the extent and variety of his attainments, as well as for his diversified career. A native of Pennsylvania, and at one time connected with her university, his early life was devoted to literary and scientific pursuits. He made several visits to Europe, and was well known to the learned societies of the Old World. Establishing himself in North Carolina soon after

the commencement of the Revolution, he engaged in political life; was some years a member of the legislature of that State; was elected by it three years successively — in 1782–83, 1783–84, and 1784–85 — to the Congress of the confederation; and was again returned to that body in 1787, as soon as the term of rotation, prescribed by the articles of confederation, would admit. After the adoption of the Constitution, he was, for three years, — from 1790 to 1793, — one of the representatives of North Carolina in the Congress of the United States. Few persons have mingled, more usefully or more honorably, the excitements of an active public career with the serene contemplations of a philosophical life.

The delegates of South Carolina are too well known to history to require any detailed notice here. John Rutledge had already signalized his great abilities, patriotism, and energy, in the stamp-act Congress of 1765, and in the Congresses of 1774, 1775, and 1776, as the bold and vigorous chief magistrate of his own State during the greater part of the war of the Revolution, and again as a member of the Congress of the confederation in 1782–83, before he appeared in the Federal Convention. After the important part he bore in the work of that assembly, he thenceforward dedicated himself exclusively to the judicial service of the country. He was one of the first judges of the supreme court of the United States; was then made chief-justice of his own State; and was finally nomi-

nated by Washington to the seat of chief-justice of the United States.

Charles Cotesworth Pinckney, who had received a thorough and finished education in England, both in the university and at the inns of court, returned to South Carolina, rich with the spoils of learning, only a few years before the commencement of the Revolution, and, with filial devotion, laid all his acquisitions at the feet of his native State. After maintaining the rights of America with ability in the forum, he asserted them with gallantry in the field through the whole period of the war, at the close of which he had attained the rank of brigadier-general. He then resumed the practice of the law, and engaged in the legislative service of his own State, from which he was transferred to the Federal Convention. He was repeatedly offered high official employments in the national service; but declined them all, until the critical condition of affairs with France, in 1796, induced him to accept the mission to that country for a short period. The estimation in which he was held, for his noble personal qualities as well as for his patriotism and talents, made him the spontaneous choice of a large number of his fellow-citizens for the office of president of the United States in the great political struggle of 1800.

Mr. Charles Pinckney, the third delegate of South Carolina in the convention, was a distant kinsman of General Pinckney. He had been a member of the Congress of the confederation, be-

fore his appointment to the convention. After the convention, he was several times governor of the State of South Carolina; was a member of the senate of the United States from 1798 to 1801; was then appointed by President Jefferson minister to Spain, which station he filled until 1805; and returned into Congress as a member of the House of Representatives in 1819, closing his public career with a single term of service in that body.

The last member of the delegation of South Carolina was Pierce Butler, a native of Ireland, who, with the blood of the Ormonds, inherited a large portion of their chivalry and elevation of spirit. He early joined the standard of America, and became a citizen of South Carolina, of which State he was appointed one of the delegates in the Congress of 1787, and the same year a deputy to the Federal Convention. He was afterwards one of the first senators of South Carolina in the Congress of the United States, from 1789 to 1796; and was again a senator of the United States from 1802 to 1804.

Of the delegation of Georgia,—the youngest sister of the Confederacy,—Colonel Few was the senior member. He had been a member of the Congress of the confederation from 1780 to 1783, and again in 1786; and was one of the first senators of Georgia in the Congress of the United States under the new Constitution, from 1789 to 1793. Abraham Baldwin, the second-named delegate, was a native of Connecticut and a graduate of Yale College, who,

removing to Georgia, took the lead in originating the university of that State. He was a member of the Congress of the confederation several years before his appointment to the convention; and, after the adoption of the Constitution, was for ten years successively a member of the House of Representatives, and, for eight years ensuing, a member of the Senate of the United States for the same State. The next of the delegates, William Pierce, was a native of Virginia; had been aide-de-camp to General Greene in the revolutionary war; and was one of the representatives of Georgia in the Congress of the confederation the year preceding his appointment to the convention. William Houston, the remaining delegate, was a member of the Congress of the confederation in 1784–85; and again in 1786–87, when he was elected to the general convention.

This retrospective glance at the composition of the convention, rapid as it has been, yet suffices to attest the rare union of high intellectual qualifications — experience, political training, learning, enlargement of views, sagacity, and ability — which the members brought with them for the performance of the great task with which they were charged. Mr. Madison, the witness and partaker of their labors, has, in a solemn paper intended for posterity, and in terms worthy to be remembered, recorded his convictions of the purity and elevation of the motives which animated each and all of them, in the discharge of their important trust,

amid every diversity of opinion that, from time to time, divided and embarrassed their councils.

"I feel it a duty," said he, "to express my profound and solemn conviction, derived from my intimate opportunities of observing and appreciating the views of the convention, collectively and individually, that there never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives, or more anxiously devoted to the object committed to them, than were the members of the Federal Convention of 1787 to the object of devising and proposing a constitutional system which should best supply the defects of that it was to replace, and best secure the permanent liberty and happiness of their country."[1]

Of the deliberations of such a body of men, engaged in such a task, it was obviously to be desired that an accurate memorial should be preserved for the information of future times. And as the convention had judged it necessary, for the success and harmony of its proceedings, that they should not be conducted in view of the public, Mr. Madison imposed upon himself the arduous labor of keeping an exact account of every thing which might pass in the body, in addition to his own share —

[1] Introduction to Debates. — A distinguished foreign writer, who has made an enlightened study of American institutions, has recorded, in very emphatic language, the deep convictions with which he was impressed of the elevated character of the convention, — "délibérant," he says, "tous les jours à huis clos, et sous les inspirations les plus sensées, comme les plus pures, qui aient jamais présidé à une telle œuvre." — Guizot, Vie de Washington.

likely to be a large and important one — in the common consultations. He has given the following interesting statement of the considerations which prompted him to this undertaking; of the perseverance with which he devoted himself to it; and of the opportunities and facilities he had for its accomplishment.

"The curiosity I had felt during my researches into the history of the most distinguished confederacies, particularly those of antiquity, and the deficiency I found in the means of satisfying it, — more especially in what related to the process, the principles, the reasons, and the anticipations which prevailed in the formation of them, — determined me to preserve, as far as I could, an exact account of what might pass in the convention, whilst executing its trust; with the magnitude of which I was duly impressed, as I was by the gratification promised to future curiosity by an authentic exhibition of the objects, the opinions, and the reasonings from which the new system of government was to receive its peculiar structure and organization. Nor was I unaware of the value of such a contribution to the fund of materials for the history of a Constitution on which would be staked the happiness of a people great even in its infancy, and possibly the cause of liberty throughout the world.

"In pursuance of the task I had assumed, I chose a seat in front of the presiding member, with the other members on my right and left hands. In this favorable position for hearing all that passed,

I noted, in terms legible and in abbreviations and marks intelligible to myself, what was read from the chair or spoken by the members; and, losing not a moment unnecessarily between the adjournment and re-assembling of the convention, I was enabled to write out my daily notes during the session, or within a few finishing days after its close, in the extent and form preserved in my own hand on my files. In the labor and correctness of this, I was not a little aided by practice, and by a familiarity with the style, and train of observation and reasoning, which characterized the principal speakers. It happened, also, that I was not absent a single day, nor more than the casual fraction of an hour in any day; so that I could not have lost a single speech, unless a very short one."

As Mr. Madison was induced to undertake for the benefit and information of future times, the record thus kept of the interior counsels and unshackled deliberations of the convention, so he regarded it as a sacred trust for posterity. It was a sealed book in his life-time; firmly withheld from publication, whilst any object of contemporary interest, ambition, or rivalship could be advanced by it. At his death it passed into the hands of the representatives of the nation, and by them it has been given to the world. With all these guarantees for its faithfulness and impartiality, superadded to the elevated character and practised competency of the author, we shall follow it with undoubting

confidence in whatever we may have occasion to say in relation to the proceedings of the convention.

NOTE.

Mr. Madison's is the only complete record of the debates of the Federal Convention which has come down to us. Judge Yates, one of the delegates of New York, took notes of a portion of the debates, embracing about one-third of the session of the convention. They were not taken, as we learn from his biographer, with any view to future publication; but they have, nevertheless, since his death been published by his family. Besides their fragmentary character, they are evidently often deficient, as far as they go, in that precision and accuracy of statement which no reporter can attain but by practice, added to quickness of perception and coolness of mind. Mr. Madison has given the following candid estimate of them in a letter addressed to the author of this work on the 21st October, 1833: —

"It may be remarked, without impeaching the integrity of the reporter, that he was the representative in the convention of the party in New York which was warmly opposed to the convention, and to any change in the principles of the 'articles of confederation;' that he was doubtless himself, at the time, under all the political bias which an honest mind could feel; that he left the convention, as the journals show, before the middle of the session, and before the opinions or views of the members might have been developed into their precise and practical application; that the notes he took are, on the face of them, remarkably crude and desultory, having often the appearance of scraps and expressions, as the ear hastily caught them, with the liability to omit the sequel of an observation, or an argument which might qualify or explain it."

CHAPTER XXIX.

Propositions of the Virginia Delegation submitted to the Convention — Proceedings upon them in Committee of the Whole — Proposed New Government to act upon Individuals, not States — Proportional or Equal Representation of the States in the Federal Councils — Gordian Knot of the Convention — Madison, Read, Patterson, Wilson, Franklin — Direct Representation of the People, in one Branch of the National Legislature, advocated by Colonel Mason and Mr. Madison — General Denunciation of the Evils of Democracy — Sherman, Gerry, Mason, Randolph — Line of Demarcation between Republicanism and Democracy — Convention averse alike to Monarchy and Democracy — Power of Coercion against the States opposed by Mr. Madison, and abandoned — Executive Department — Convention decide in Favor of Single, instead of Plural, Executive — Danger of Monarchy, from Corruption of People and their Leaders — Prophetic Views of Dr. Franklin — Functions and Mode of Appointment of Federal Judiciary — Term of Service of Popular Branch of Legislature — Noble and Manly Rule of Political Conduct avowed by Mr. Madison — He advocates a Firm and Stable Senate as Counterpoise to Popular Branch — Enlightened Sentiments of Governor Randolph — Virginia Propositions, with Partial Modifications, agreed to in Committee of the Whole, and reported to the Convention — New-Jersey Plan brought forward — Colonel Hamilton opposed to both Virginia and New-Jersey Plans — Suggests a Plan of his own — Outline of his Speech and Plan — They meet with little Favor in the Convention — New-Jersey Plan rejected by Committee of the Whole — Virginia Propositions, as modified, again reported to the Convention — Apocryphal Draught of a Federal Government by Mr. Charles Pinckney, of South Carolina.

The main business of the convention was opened on the 29th of May, by Governor Randolph, who submitted, on behalf of the Virginia delegation,

a series of resolutions, fifteen in number, embodying in a concrete form, for the convenience of modification and discussion, those leading ideas of reform proposed as the basis of an efficient constitutional system for the Confederacy.[1]

These resolutions set out by affirming the necessity of an alteration and enlargement of the articles of confederation, in order to accomplish the avowed objects of their institution. They then proposed, in lieu of the equal representation of all the States in the national legislature, as under the existing system, to substitute a proportional representation according to numbers or contributions; the division of the legislative department into two independent branches; and the extension of its powers to all cases involving the harmony and common interests of the Confederacy, with a negative upon any of the laws of the States, which, in the opinion of the national legislature, should contravene the articles of union or treaties with foreign powers, and an authority to call forth the force of the Union against delinquent members.

[1] The resolutions referred to in the text have been sometimes spoken of as the individual proposition of Governor Randolph. But Mr. Madison states expressly, that "they were the result of a consultation among the deputies of the State; the whole number, seven, being present. Mr. Randolph was made the organ on the occasion, being then the governor of the State, of distinguished talents, and in the habit of public speaking." It was understood, however, that no member of the deputation was committed to their precise tenor or form, but all would be free to propose or concur in any modifications or alterations which, on farther reflection, might appear proper. — See letter of Mr. Madison to J. Tyler, in M'Guire's Selection, &c., p. 308; and Madison Debates, vol. II. p. 715.

A national executive, it was proposed, should be chosen by the national legislature for a limited term, — to be thereafter ineligible, — which, besides the general authority to execute the laws of the Union and exercise the executive rights vested in Congress by the confederation, was, in conjunction with a convenient number of the judiciary, to have a qualified negative upon the acts of the legislative department. The national judiciary, proposed by the resolutions, was to consist of one or more supreme tribunals and of inferior tribunals, to be chosen also by the national legislature, to hold their offices during good behavior, and to have jurisdiction of piracies and felonies on the high seas, captures from an enemy, controversies in which foreigners or citizens of different States may be interested, impeachments of Federal officers, cases concerning the collection of the national revenue, and, in general, all questions involving the national peace and harmony.

The resolutions farther declared, that provision ought to be made in the proposed scheme of organic reform for the future admission of new States into the Union; for the guarantee of republican government to each one of the States; for the continuance of the existing authorities of the Confederacy, until the inauguration of the new system, and the fulfilment of all engagements contracted by them; for amendments of the Constitution, from time to time; for requiring of the State authorities an oath to observe and support the

articles of union as agreed upon, and for the ratification of those articles by convention of the people, to be called in the respective States.

As soon as these propositions were read, a motion was made and carried, that the convention would, on the following day, resolve itself into a committee of the whole House, to consider the state of the Union; and that the propositions, submitted by the delegation of Virginia, be referred to that committee. On the same day, Mr. Charles Pinckney, of South Carolina, laid before the convention the draught of a Federal government, which he had prepared. This draught not having been preserved among the papers of the convention, the secretary of State, when preparing the journal of the convention for publication in 1818–19, applied to Mr. Pinckney for a copy of it, and was furnished by him with a paper which has been inserted in the printed journal as the plan offered by him. But from the singularly minute coincidences between it and the Constitution finally adopted, and, at the same time, the marked discrepancies between it and propositions actually made or ideas advanced by him in the convention, it is evident that the paper furnished to the secretary of State could not have been the paper offered to the convention. The probability seems to be, that it was drawn up, after the lapse of many intervening years, from loose and imperfect memoranda, eked out by a reference to the text of the Constitution itself. The plan of Mr. Pinck-

ney, whatever it was, was also referred to the committee of the whole House on the state of the Union; but there is no trace of its having been considered there, or ever reported upon.[1]

On the following day, the Virginia propositions were taken up in committee of the whole, and continued to be the subject of deliberation and discussion in the committee, day after day, for the space of two weeks; at the end of which time, they were reported back to the House, with certain modifications, rather of form than of substance. As the proceedings of this fortnight brought into debate all the main principles of the proposed system, a brief retrospect of those proceedings, in connection with the opinions and doctrines expressed by leading members, becomes essential alike to a just comprehension of individual views, and of the general scope and spirit of the action of the convention.

The first of the resolutions offered by Mr. Randolph, on behalf of the Virginia delegation, not appearing to express with sufficient distinctness the nature and character of the change contemplated in the existing system, he himself proposed to substitute for it the following declaration: "That a national government ought to be established, consisting of a supreme legislative, executive, and judiciary." The substitute was intended to mark more clearly the distinction between a system purely Federal, resting on the good faith alone of

[1] See note at the end of this chapter.

the *sovereign parties* to it to carry into effect the decrees of the central authority, and a system acting directly and compulsively on *individuals*, which, for the want of a more specific term, was denominated national. In this sense, the proposition was earnestly sustained and enforced, among others, by Colonel Mason, of Virginia. It was adopted by nearly a unanimous vote of the States present, — Connecticut only dissenting, New York divided; and it thus formed the corner-stone of the proposed system.

The second of the Virginia resolutions, proposing a representation in the national legislature according to the quotas of contribution or the number of inhabitants, was then taken up; when Mr. Madison, in order to obtain a decision of the convention on the general question of changing the existing principle of parity of representation, without complicating it, for the present, by the consideration of any new and specific rule of apportionment, submitted the following proposition in lieu of the one originally offered on behalf of the delegation of Virginia: —

"Resolved, that the equality of suffrage, established by the articles of confederation, ought not to prevail in the national legislature, and that an equitable ratio of representation ought to be substituted."

Mr. Read, of Delaware, immediately moved that the whole question of representation should be postponed, as the commission, under which the

delegation of his State acted, expressly restrained them from assenting to any change of the existing rule; and he intimated that they might feel it to be their duty to withdraw from the convention, if such a change should be determined upon. Mr. Madison vindicated the proposed change of the principle of representation as a necessary consequence involved in the transition, just agreed to, from a purely Federal to a modified national government. But, from the sensibility which the question excited, it was finally agreed to postpone its farther consideration to a future day.

On the 9th of June, it was again taken up, when the delegates of New Jersey exhibited even a greater warmth of opposition to the proposed change than the representatives of Delaware had done. One of them, the attorney-general of the State, Mr. Patterson, went so far as to declare that "New Jersey will never confederate on the plan before the committee. She would be *swallowed up*. He had rather submit to a monarch — a despot — than to such a fate. He would not only oppose the plan, but, on his return home, he would do every thing in his power to defeat it there."

Mr. Wilson, of Pennsylvania, replied to Mr. Patterson, and entered into an elaborate defence of the principle of proportional representation, bringing to its support that force of reason and array of learning for which he was distinguished. In reference to the language of menace which had been used, he said, "If the small States will not

confederate on this plan, Pennsylvania, and, he presumed, some other States, would not confederate on any other. We have been told, that, each State being sovereign, all are equal. So, each man is naturally a sovereign over himself, and all men are therefore naturally equal. Can he retain this equality [sovereignty], when he becomes a member of civil government? He cannot."

On the following day, the subject was resumed; and Dr. Franklin delivered his sentiments upon it in a paper read, at his request, by his colleague, Mr. Wilson. He earnestly and impressively deprecated the spirit of discord, and exclusive adherence to particular views, which had been manifested; and, in the course of his remarks, demonstrated how, with an equal vote of all the States in the national legislature, it would be in the power of the smaller States to *swallow up* the greater, who were naturally as unwilling to leave their property and rights at the mercy of the smaller, as the smaller were to leave theirs in the disposition of the greater.

Mr. Sherman, of Connecticut, threw out the sug gestion, that, in the first branch, the representation of the States should be proportioned to numbers; but in the second branch, or Senate, it should be equal, each State having one vote and no more. In consequence of this suggestion, it would seem, Mr. King, of Massachusetts, and Mr. Wilson, of Pennsylvania, proposed to modify Mr. Madison's resolution by declaring, that " the right of suffrage,

in the *first* branch of the national legislature, ought not to be according to the rule established in the articles of confederation, but according to some equitable ratio of representation." This motion was carried in the affirmative by the votes of seven States, — Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia; New York, New Jersey, and Delaware voting against it, and Maryland being divided.

The question then recurred on the *ratio* of representation, — Mr. Sherman having proposed that it should be according to the number of free inhabitants; and Mr. Rutledge, of South Carolina, supported by Mr. Butler of the same State, that it should be according to the quotas of contribution. Mr. Wilson, of Pennsylvania, seconded by Mr. Charles Pinckney, of South Carolina, moved that it should be according to the whole number of free inhabitants and three-fifths of the slaves; which was the rule agreed to, as we have heretofore seen,[1] on the proposition of Mr. Madison, in the Congress of 1783, for apportioning the amount of revenue to be raised among the several States. The motion of Mr. Wilson was sustained and carried by nine States; New York and Maryland now voting in the affirmative with the States that constituted the majority on the last division, and New Jersey and Delaware only being in the negative.

The rule of representation being thus deter-

[1] See vol. I. pp. 424, 425.

mined for the first branch of the national legislature, Mr. Sherman moved that each State shall have one vote in the second branch. On this motion, five States voted in the affirmative,— Connecticut and Maryland uniting with New York, New Jersey, and Delaware, in favor of it; and the remaining six States, forming a majority of those present, voted against it. Mr. Wilson, of Pennsylvania, and Colonel Hamilton, of New York, then moved that the "right of suffrage in the second branch ought to be according to the same rule as in the first branch." This motion was carried by six States against five,— those States which voted in the negative on Mr. Sherman's motion now voting in the affirmative; and, *vice versâ*, the affirmative votes on that motion being negative on this.

Thus modified, the second of the Virginia resolutions was agreed to in committee of the whole; but the peculiarly sensitive question to which it related had not yet received its quietus, but was destined, as we shall see, to prove a source of further discord, and of still recurring and alarming collisions of interest and opinion in the ulterior deliberations of the convention.

The third of the Virginia resolutions, declaring that the national legislature ought to consist of two branches, was agreed to without debate; and met with no dissenting voice except that of Pennsylvania, whose vote was supposed to proceed from a sentiment of deference to Dr. Franklin,

who was known to be the advocate of a single legislative assembly.

The fourth resolution, affirming that "the members of the first branch of the national legislature ought to be elected by the people of the several States," gave rise to an interesting and instructive development of opinion with regard to the fundamental principles on which the republican institutions of America should be based. Several of the delegates opposed a direct election, even of the first branch of the national legislature, by the people; contending that the choice ought to be made by the State legislatures. Mr. Sherman, of Connecticut, said, "The people *immediately* should have as little to do as may be about the government. They want information, and are constantly liable to be misled." Mr. Gerry, of Massachusetts, declared, "The evils we experience flow from the excess of *democracy*. The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts, it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute." [1]

Colonel Mason, of Virginia, admitted that "we

[1] On the very last day of the session of the convention, Mr. Gerry repeated yet more emphatically his conviction of the evils of democracy. "In Massachusetts, particularly, he saw the danger of this calamitous event [civil war]. In that State, there are two parties: one devoted to democracy, the *worst, he thought, of all political evils;* the other as violent in the opposite extreme."—See Madison Debates, vol. III. p. 1603.

had been too democratic;" but he contended that as the first branch of the national legislature was designed to be the popular branch of the government, — the American House of Commons, so to speak, — it should proceed from a direct popular election, while the other branches of the government might properly be constituted on different principles. In these views, he was supported by Mr. Madison, who considered "the popular election of one branch of the legislature to be essential to every plan of free government. In the appointment of the second branch of the legislature, and in the executive and judiciary branches of the government, he was an advocate for refining the popular choice by successive filtrations; but the great fabric [of a representative assembly] he thought would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the State legislatures."

The question was decided in favor of the popular election of the first branch of the legislature by the votes of five States, — Massachusetts, New York, Pennsylvania, Virginia, North Carolina, and Georgia; New Jersey and South Carolina voting in the negative, and Connecticut and Delaware divided. The question was reconsidered and again discussed on a subsequent day; when a motion, made by Mr. Charles Pinckney, of South Carolina, and seconded by Mr. Rutledge, of the same State, "for an election of the first branch

by the State legislatures, and *not* by the people," was negatived by a vote of eight States to three.[1]

It is a striking and edifying circumstance, disclosed in all the discussions of the convention, that the members who were firm and zealous friends of republican institutions were, at the same time, especially anxious to guard against the abuses and evil tendencies of democracy.[2] It was a remark of Colonel Hamilton in the convention, "that the members most tenacious of republicanism were as loud as any in declaiming against the vices of democracy."[3] Whatever may have been the spirit which dictated this remark,—for Colonel Hamilton himself was no believer in republican institutions,—the fact stated by him was undoubtedly true. In addition to the declarations cited above of Mr. Sherman, of Mr. Gerry, and of Colonel Mason, Governor Randolph of Virginia, on the same day that those declarations were uttered, avowed his conviction, "that the evils under which the United States labored, had their origin in the turbulence and follies of democracy."

The friends of a republican system in America deprecated alike the vices of monarchy and of

[1] See Madison Debates, vol. II. pp. 800–809.

[2] It can hardly be necessary, the author flatters himself, to say that in speaking of democracy and republicanism here, and in other parts of his work, he uses the terms in their general philosophical sense, without the slightest reference to existing party designations; such designations being, for the most part, arbitrary or accidental, and but seldom accurately descriptive of the real principles and objects of the bodies of men who assume them, or to whom they are applied.

[3] See Madison Debates, vol. II. p. 886.

democracy. Their great object was to devise and establish a system which should be free from the evils of both. Mr. Madison wisely and nobly interpreted their policy, when, a few days later, he said on the floor of the convention, that "he conceived it to be of great importance that a *stable* and *firm* government, in the *republican* form, should be held out to the people. If this be not done, and the people be left to judge of this species of government by the operations of the defective systems under which they now live, it is much to be feared the time is not distant when, in universal disgust, they will renounce the blessing which they have purchased at so dear a rate, and be ready for any change that may be proposed to them."[1] The influence of this guiding principle, and the broad line of demarcation which existed in the minds of our ancestors between republicanism and democracy, are to be traced in every stage of the deliberations of the convention.[2]

[1] See Madison Debates, vol. II. p. 853.

[2] Democratic and republican institutions, now often and unphilosophically confounded, were, by the framers of the American Constitution following the great lights of antiquity, considered essentially distinct both in their nature and consequences. A democracy, as we have already had occasion to show (vol. I. pp. 156, 157), was considered by Aristotle, not as a natural and legitimate form of government, but as the perversion or corruption of a republic, which, by him and other Greek political philosophers, was denominated Πολιτεία. The fundamental difference between the two, with reference to first principles, may be summed up in this general statement: A democracy, whether representative or collective, is, as its name imports, a government of mere numbers *told by the head*, according to the significant phraseology of Burke (see appeal from the new to the old Whigs), in which the controlling power resides in and is exercised

The fifth resolution, providing that "the second branch of the national legislature ought to be chosen by the first branch out of persons nomi-

by the whole mass of inhabitants without regard to special qualifications of fitness or common interest. A republic, on the other hand, is a commonwealth of legally constituted members, without privileged caste, in which the controlling power resides in and is exercised by all who have a real stake in the common weal, — *res publica*, — to be determined by the organic law. In pursuance of this idea, the Virginia Bill of Rights of 1776 declared the right of suffrage to belong to "all men who have sufficient evidence of *permanent common interest with or attachment to the community*," or, as Mr. Madison, in the latest and most mature enunciation of his opinions on the same subject, expressed it, to all persons "having a sufficient stake in the public order and the stable administration of the laws." — See Madison Debates, &c., vol. III. Appendix, p. XIV.

In a republic, the true conception of the *people*, with whom the political power resides, is not, as in a democracy, that of an aggregation or multitudinous herd of inhabitants of every description, but that of a body politic or association of *citizens* having common interest, and invested, by mutual compact, with certain political rights for the better security and protection of those interests. To this effect, Aristotle in his Politics, book iii. chap. 1., and Cicero in the remains of his great work *de Republica*, unequivocally express themselves. The latter, speaking to the very point under consideration, says, "Res publica est res populi. Populus autem non omnis cœtus multitudinis, sed cœtus juris consensu et utilitatis communione sociatus."

It must ever be borne in mind, that all the great writers of antiquity, both philosophers and historians, — Plato, Aristotle, Thucydides, Xenophon, Polybius, Cicero, Livy, Tacitus, — while zealous eulogists and admirers of republican government with its appropriate safeguards, were opposed, with no less earnestness, to the dangerous license of a democracy. So, too, it was with the great oracles of republican liberty in England in the seventeenth century, — Milton, Sidney, Harrington, Locke, — whose works were the familiar fountains at which the statesmen of America, contemporary with the Constitution, drank of the love of a well-ordered freedom and of the principles of a sound republican polity.

The difference between the democratic and republican theories of government is farther illustrated in their practical consequences, and the positive institutions springing from each. Universal suffrage, frequent and exciting popular elections of every description and grade of public functionaries, an elective and dependent judiciary, the subjection of both private rights and public trusts to the absolute and unchecked control of capricious,

nated by the State legislatures," was, after two days' discussion, so modified by a general vote of the committee as to refer the election of the second branch absolutely to the State legislatures.

The sixth of the resolutions, which described, in general terms, the nature of the powers to be exercised by the legislative department, was then taken up, and its several clauses successively agreed to, down to and including that which proposed to give it a negative "on all State laws, contravening, in the opinion of the national legislature, the articles of the Union, or any treaties subsisting under the authority of the Union." This last clause being acceded to without debate or any dissenting voice, Mr. Madison moved at once to postpone the remaining clause of the resolution, which authorized the calling forth of the force of the Union against a delinquent State. "An Union of the States," he said, "containing such an ingredient, seemed to provide for its own destruction. The use of force against a State would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts

interested, or blind as well as irresponsible majorities, — such are the visible and pernicious manifestations of democratic rule. Regulated and qualified suffrage in the election of representatives, the choice of other functionaries by select and intermediate agencies, an independent judiciary, reciprocal checks and balances between the different departments of delegated power, the living and sole supremacy of the law and the constitution, guarding alike the rights of minorities and majorities, — these are the distinguishing and beneficent characteristics of a republic.

by which it might be bound. He hoped that such a system would be framed as to render this resource unnecessary, and moved, therefore, that the clause be postponed." It was, accordingly, postponed; and, finally, pretermitted altogether.

The next resolution related to the executive department. There was a manifest shyness in approaching it, as well from the intrinsic difficulty, as the delicate bearings, of the questions it involved. The seventh of the Virginia resolutions proposed, that, besides a general authority to execute the laws of the Union, the national executive should possess the rights of an executive nature, vested in Congress, by the articles of confederation. The generality of this language, it was apprehended, might carry with it the power of peace and war, and other prerogatives of a very important character. Mr. Madison, therefore, proposed, as a preliminary to other questions respecting the executive department, that the extent of its authority should be more accurately defined; and, upon his motion, the resolution under consideration was so amended as to declare that "the executive should have the power to carry into effect the national laws, and to appoint to offices in cases not otherwise provided for by law."

The thorny question then recurred, whether the executive power should be vested in a single person or a plural body. Mr. Rutledge, of South Carolina, and Mr. Wilson, of Pennsylvania, promptly declared in favor of a single executive, "as giving most en-

ergy, despatch, and responsibility to the office." Governor Randolph, of Virginia, strenuously opposed the unity of the executive magistracy, "as being the fœtus of a monarchy;" and could not see "why the great requisites for the executive department — vigor, despatch, and responsibility — might not be found in three men, as well as one man."

The members of the convention being unprepared for a decision of the question, it was postponed to another day; when Messrs. Rutledge and C. Pinckney, of South Carolina, made a formal motion that the executive consist of one person. Governor Randolph renewed his opposition to it with great earnestness, — declaring that "the temper of the people was adverse to the very semblance of monarchy." Mr. Wilson, of Pennsylvania, replied: —

"All know a single magistrate is not a king. One fact had great weight with him. All the thirteen States, though agreeing in scarce any other instance, agree in placing a single magistrate at the head of the government. The idea of three heads has taken place in none. The degree of power is, indeed, different; but there are no coordinate heads. In addition to his former reasons for preferring a unity, he would mention another. The tranquillity, not less than the vigor, of the government, he thought, would be favored by it. Among three equal members, he saw nothing but uncontrolled, continued, and violent animosities,

which would not only interrupt the public administration, but diffuse their poison through the other branches of the government, — through the States, — and, at length, through the people at large."

The question was finally determined in favor of a single executive by the votes of seven States against three: Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia voting in the affirmative; New York, Delaware, and Maryland, in the negative. Of the members of the Virginia delegation, General Washington, Mr. Madison and Dr. M'Clurg voted in favor of the unity of the executive; and Governor Randolph and Judge Blair against it. Chancellor Wythe and Colonel Mason were absent at the time of the vote; but it was known to their colleagues, that the former agreed in opinion with the majority, and the latter with the minority.

Although the unity of the executive, for which there were many strong reasons of expediency, certainly did not, of itself, give a monarchical character to the proposed government, yet the danger of its passing into a virtual monarchy, under the disguise of a democracy, by the corruption of the people and their leaders, unless counteracted by wise and vigilant precautions, did not escape the sagacity of some of the leading members of the convention. No one discerned this danger more clearly than Dr. Franklin. Seeing how much such a transformation of the government would be facilitated by the example of annexing a large pecuniary com-

pensation to the chief executive office, he proposed that, in lieu of "compensation for his services," the executive magistrate should have "his necessary expenses paid, but that he should receive no salary, stipend, or reward for his services." In support of this proposition, he submitted to the convention, in a paper read by his colleague, Mr. Wilson, observations of such profound wisdom and foresight, that, looking at them now by the light of intervening experience, they return upon us with all the solemnity of a prophetic and inspired warning. The tendency of a periodical struggle, for places of profit and emolument, to generate corrupt and unprincipled factions, destructive alike to the public liberty and morals, he portrayed in the following glowing language of indignant truth and patriotism: —

"And of what kind are the men that will strive for this profitable pre-eminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your government and be your rulers; . . . and there will always be a party for giving more to the rulers, that the rulers may be able, in return, to give more to them.

"It will be said, we don't propose to establish

kings. I know it; but there is a natural inclination in mankind to kingly government. It sometimes relieves them from aristocratic domination. They had rather have one tyrant than five hundred. It gives more the appearance of equality among citizens; and that they like. I am apprehensive, therefore, — perhaps too apprehensive, — that the government of these States may, in future times, end in monarchy. But this catastrophe, I think, may be long delayed, if, in our proposed system, we do not sow the seeds of contention, faction, and tumult, by making our posts of honor places of profit."

Two days later, in a debate which arose on another proposition respecting the executive, he said yet more pointedly, "All profitable places will be at his disposal. The first man put at the helm will be a good one. Nobody knows what sort will come afterwards. The executive will be always increasing here, as well as elsewhere, till it ends in monarchy."

Views of a similar character were expressed by other members, in the discussion of a proposition made by Mr. Wilson and Mr. Hamilton, to give to the executive an absolute negative on the acts of the legislature. Mr. Madison, in opposing it, said, "To give such a prerogative would certainly be obnoxious to the temper of this country;" and Mr. Butler, of South Carolina, remarked, "Gentlemen seemed to think that we had nothing to apprehend from an abuse of executive power; but

why might not a Catiline or Cromwell arise in this country, as well as in others?" Colonel Mason, in commenting on the proposition, said with energy, "We are, Mr. Chairman, going very far in this business. We are not, indeed, constituting a British government, but a far more dangerous monarchy, — an elective one."

The motion of Mr. Wilson and Mr. Hamilton was finally rejected by the unanimous vote of the ten States present; and the proposition of Mr. Gerry, of Massachusetts, to give to the executive alone (without the judiciary, which the resolutions of Virginia proposed to superadd) a qualified veto, — to be overruled by two-thirds of both branches of the legislature, — was carried by the vote of eight States to two. Mr. Madison made an earnest effort to associate a portion of the judiciary with the executive in the exercise of this revisionary control. He said, that, "whether the object of the revisionary power be to restrain the legislature from encroachments on the other co-ordinate departments or on the rights of the people at large, or from passing laws unwise in their principle or incorrect in their form, the utility of annexing the wisdom and weight of the judiciary to the executive seemed to him incontestable." He was sustained by the votes of three States, Connecticut, New York, and Virginia; but, the other States adhering to Mr. Gerry's proposition, the resolution originally offered by the Virginia delegation on the subject was modified accordingly.

With regard to the mode of appointing the executive magistrate, Mr. Wilson, of Pennsylvania, proposed that, in lieu of an appointment by the national legislature, he should be chosen by electors voted for by the people in districts, to be formed of the respective States for that purpose. The proposition of Mr. Wilson received the votes of only two States, Pennsylvania and Maryland; and it was finally determined, in committee of the whole, by the concurrence of the remaining eight States, then present, that he should be chosen by the national legislature for a term of seven years,[1] and be thereafter ineligible.

The ninth of the Virginia resolutions, relating to a national judiciary, was then taken up, and received some modification. Mr. Rutledge, of South Carolina, objected to the establishment of inferior tribunals under the national authority; insisting that the State tribunals ought to be left, in all cases, to decide in the first instance; and that the right of appeal from them to the supreme national tribunal would suffice to secure uniformity of decision, and answer all the other purposes of a well-regulated judicial establishment. Mr. Madison contended, that, in many cases, an appeal would be no remedy for improper verdicts of juries

[1] On the duration of the office, when presented as a separate question, there was great difference of opinion. Mr. Wilson and Mr. Sherman advocated a term of three years, with re-eligibility; Colonel Mason and Mr. Charles Pinckney, seven years, and ineligibility thereafter. In the vote on the separate question, five States were for seven years, four against it, and one State divided. — See Madison Debates, vol. II. pp. 766, 767.

obtained in the State tribunals, under the influence of local prejudices or excitements; and that an effective judiciary establishment must be co-extensive with the legislative authority of the government to which it belongs. "A government without a proper executive and judiciary," he said, "would be the mere trunk of a body, without arms or legs to act or move."

The motion of Mr. Rutledge, to strike out "inferior national tribunals," so far as their establishment was to be made *obligatory* on Congress, was carried by the vote of six States to four; but a subsequent proposition, moved by Mr. Wilson and Mr. Madison, to empower the national legislature, *at its discretion*, "to institute inferior national tribunals," received the sanction of eight States, against two only in the negative.

A difference of opinion existed as to the mode of appointing the judges. The resolution originally offered by the Virginia delegation contemplated an appointment by the national legislature. In lieu of this, Mr. Wilson, of Pennsylvania, proposed that they should be appointed by the executive. Mr. Rutledge protested "against granting so great a power to a single person, as leaning too much to monarchy." Mr. Madison was opposed to referring the appointment either to the executive or the national legislature, and proposed to give it to the senatorial branch alone. His proposition was finally adopted, without dissent, in committee of the whole.

The tenth, eleventh and twelfth of the Virginia resolutions, providing severally for the admission of new States into the Union, the guarantee of republican government to the individual States, and the continuance of the existing authorities, until the inauguration of a new system, were successively agreed to with little or no debate, and with slight modifications of one of them only.

The three remaining resolutions, providing for future amendments of the Constitution, for oaths to be taken by the State officers to support it, and for its ratification by the supreme authority of the people in the several States, gave rise, each of them, to a brief conversational discussion; but were finally assented to without any essential alteration, and all, except one of them, in the very words in which they were proposed.

The entire series of the Virginia propositions having thus undergone a general review in committee of the whole, the committee now returned to the fourth and fifth of the resolutions, relating to the constitution of the two branches of the national legislature, for the purpose of filling certain blanks that had been left in them. The first blank to be filled was for the term of service of the House of Representatives. Mr. Madison, in sustaining the motion of Mr. Jenifer for three years, said, "Instability is one of the great vices of our republics to be remedied." Mr. Gerry, of Massachusetts, who, on a former occasion, as we

have seen, was so earnest in deprecating the evils of democracy, was now, it seems, unable to break away from the spell of the ancient democratic traditions of New England. "The people of New England," he said, "will never give up the point of annual elections."

This remark furnished Mr. Madison the occasion for laying down a rule of political conduct worthy of his high character, and of the great scene in which he was acting.

"If," said he, "the opinions of the people were to be our guide, it would be difficult to say what course we ought to take. No member of the convention could say what the opinions of his constituents were at this time; much less could he say what they would think, if possessed of the information and lights possessed by the members here; and still less what would be their way of thinking six or twelve months hence. We ought to consider what was right and necessary in itself for the attainment of a proper government. A plan, adjusted to this idea, will recommend itself. The respectability of this convention will give weight to their recommendation of it. Experience will be constantly urging the adoption of it; and all the most enlightened and respectable citizens will be its advocates. Should we fall short of this necessary and proper point, this influential class of citizens will be turned against the plan; and little support, in opposition to them, can be gained to it from the unreflecting multitude."

The motion for three years was carried by the vote of seven States against four.

The periods of three, five, and seven years were severally proposed for the duration of the second or senatorial branch of the national legislature: the first period by Mr. Pierce, of Georgia; the second by Mr. Sherman; and the last by Mr. Spaight, of North Carolina. Governor Randolph earnestly sustained the motion for seven years. "The democratic licentiousness of the State legislatures," he said, "proved the necessity of a firm Senate. The object of this second branch is to control the democratic branch of the national legislature. If it be not a firm body, the other branch, being more numerous and coming immediately from the people, will overwhelm it." He concluded with an observation, the sagacity of which has been justified, in a striking manner, by the actual workings of the Constitution in its later and degenerate stages, since the undue development of the democratic element has deranged the original balances of the system, and favored the irregular concentration of power in a single hand. "A firmness and independence may be the more necessary," he remarked, "in this branch, as it ought to guard the Constitution against encroachments of the *executive, who will be apt to form combinations with the demagogues of the popular branch.*"

In these remarks, Governor Randolph was seconded by Mr. Madison, who said: —

"What we wished was to give to the govern-

ment that stability which was everywhere called for, and which the enemies of the republican form alleged to be inconsistent with its nature. He was not afraid of giving too much stability to this branch by the term of seven years. His fear was that the popular branch would still be too great an overmatch for it."

The term of seven years for the Senate was carried in the committee by eight States in the affirmative, to a single one, — Connecticut, — in the negative; and two States — Massachusetts and New York — divided.

It was provided by the Virginia resolutions, that members of both branches of the national legislature should be incapable of appointment to any other office during their terms of legislative service, and for an undefined period thereafter. On the question of fixing the period of disqualification after the expiration of the legislative term, Maryland voted to extend it to three years; but a large majority of the States concurred in fixing it at one year.

The committee of the whole, having now fully completed their deliberations on the propositions submitted by the delegation of Virginia, — which they had had under their consideration since the 30th day of May, — reported them back to the convention on the 13th of June, with the partial modifications already noticed. These modifications made no change in any essential feature of the plan. The original resolutions, which were

fifteen in number, were arranged by the committee, for greater clearness and convenience, into nineteen. These nineteen resolutions, which now formed the report of the committee of the whole, were, in truth, still the Virginia plan, slightly modified and adopted by the committee.

They presented the outline of a central government, organized into regular departments, legislative, executive, and judicial, with power to act directly, in all cases of Federal concernment, on the citizens of the several States, without the intervention of the State governments. The legislative department was to be divided into two branches, — the one to be chosen, for a shorter term, by the people; the other, for a longer, by the State legislatures; and the representation in both branches to be apportioned among the States according to their respective numbers of inhabitants of a particular description. To this department, besides the legislative rights vested in Congress by the confederation, was to be granted authority to legislate in all cases to which the several States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; and also to negative all laws passed by the several States, contravening, in the opinion of the national legislature, the articles of the Union, or any treaties subsisting under the authority of the Union. The executive power was to be vested in a single magistrate to be chosen by the national legislature for a term of seven years, to be ineli-

gible a second time, and to be removable on impeachment and conviction of malpractices or neglect of duty. This magistrate was also to have a qualified negative on the acts of the legislative department. The national judiciary were to be chosen by the Senate alone, to hold their offices during good behavior, and to have jurisdiction of all cases respecting the collection of the national revenue, impeachments of Federal officers, and questions, in general, which involve the national peace and harmony.

When the report of the committee of the whole was presented, its consideration was postponed until the following day, in order to afford an opportunity for the presentation of other plans, which, there was reason to believe, were in contemplation of some members of the convention. On the following day, a still further postponement took place, on the motion of Mr. Patterson, of New Jersey, who announced that it was the intention of the deputations of several of the States — of his own particularly — to digest a plan purely Federal and contradistinguished from the one reported by the committee of the whole. On the third day, this plan was brought in. After some conversation as to the proper mode of giving it a fair and respectful hearing, it was, on motion of Mr. Madison, committed to a committee of the whole house; and, in order to place the two plans in due comparison with each other, the Virginia plan was re-committed to the same committee, and

their farther consideration postponed then to the next day.

The plan presented by Mr. Patterson, called the New-Jersey plan, was concerted and arranged between the deputations of that State, of Delaware, of New York, and of Connecticut, with the individual co-operation of Mr. Luther Martin, one of the delegates of Maryland. The extreme jealousy, which we have already seen manifested by the representatives of the two first-named States with regard to the equal suffrage of the States in the common councils of the Confederacy, was the principal source of their aversion to the plan reported by the committee of the whole.[1] The delegates of

[1] The venerable John Dickinson, of Delaware, was one of the stoutest champions of the equal representation of the States in one branch of the national legislature. On the first explosion of the violent spirit of resistance manifested by the smaller States to the report of the committee of the whole, he said to Mr. Madison, "You see the consequences of pushing things too far. Some of the members of the small States wish for two branches in the general legislature, and are friends to a good national government; but we would sooner submit to foreign power than be deprived, in both branches of the legislature, of an equality of suffrage, and thereby be thrown under the dominion of the larger States." — See Madison Debates, vol. II. p. 863, in note.

A very philosophical view, expressed by him in the convention, as to the value of a separate organization of the States as an element of stability in the free institutions of America, seems to have received an instructive illustration from recent events. "One source of stability," he said, "is the double branch of the legislature. The division of the country into distinct States formed the other principal source of stability. This division, therefore, ought to be maintained, and considerable powers be left with the States. This was the ground of his consolation for the future fate of his country. Without this, and in case of a consolidation of the States into one great republic, we might read its fate in the history of smaller ones." — Madison Debates, vol. II. p. 777, 778.

Connecticut, and Messrs. Lansing and Yates, — forming a majority of the delegation of New York, — united with the deputations of New Jersey and Delaware, not so much from an exclusive attachment to the principle of the sovereignty and equality of the States, as from the policy of preserving the existing frame-work of the confederation, and of simply vesting in Congress, as then organized, a few additional powers.

It was under the influence of these mixed political views that the New-Jersey plan was conceived and prepared. It proposed to vest in the existing Congress, — a single body in which all the States had an equal suffrage, — in addition to the powers already given to it by the articles of confederation, that of raising revenue by imposts and stamp and postage duties, and also that of passing acts for the regulation of commerce with foreign nations and between the States; leaving the enforcement of all such acts, in the first instance, to the State courts, with an ultimate appeal to the tribunals of the United States. Whenever requisitions on the States for contributions should be made, and any State should fail to comply with such requisitions within a specified time, Congress was to be authorized to direct their collection in the non-complying States, and to pass the requisite acts for that purpose. None of the foregoing powers, however, were to be exercised by Congress without the concurrence of a certain number of the States, exceeding a bare majority of the whole.

The plan also proposed the organization of a Federal executive and a Federal judiciary,—the former to be a plural body, consisting of a certain number of persons, to be chosen by Congress, for a limited term; to be ineligible a second time, and to be removable by Congress on the application of a majority of the executives of the several States: the latter to be appointed by the Federal executive, to hold their offices during good behavior, but to have no original jurisdiction except in the single case of impeachments of Federal officers. In all other cases, their jurisdiction was to be confined to appeals from the State courts, who were to decide, in the first instance, all questions arising under the acts of the Federal authority, which were declared to be the supreme law of the land, when made in pursuance of the articles of confederation, or of the additional powers now to be vested in Con gress. It was, finally, provided that if any State, or any body of men in any State, shall oppose or prevent the carrying into execution any act of Congress passed in virtue of the powers granted to that body, or any treaty made and ratified under the authority of the United States, the Federal executive shall be authorized to call forth the power of the confederated States, or so much thereof as may be necessary, to enforce and compel an obedience to the acts, or an observance of the treaties, whose execution shall have been so opposed or prevented.

Such were the salient features of the plan now brought forward as a substitute for the Virginia

propositions, as reported by the committee of the whole. The merits and demerits of the two schemes were earnestly debated for three days, — by Mr. Lansing, of New York, and Mr. Patterson, of New Jersey, in favor of the proposed substitute; by Mr. Wilson, Governor Randolph, and Mr. Madison, in support of the Virginia plan. In the progress of the discussion upon the two plans, Colonel Hamilton, of New York, made an elaborate speech, declaring himself to be opposed to both, and suggesting a third and more *absolute* plan, which he thought was alone adequate to the exigencies of the country.

He frankly avowed his distrust of both republican and federal government, under any modification. He entered into a minute analysis of the various sources and elements of political power, in order to show that all these would be on the side of the State governments, so long as a separate political organization of the States was maintained, and would render them an over-match for any general government that could be established, unless a "complete sovereignty" was vested in the latter. He thought it essential, therefore, to the ends of a good and efficient government of the whole country, that the State governments, with their vast and extensive apparatus, should be extinguished; though "he did not mean," he said, "to shock public opinion by proposing such a measure."[1]

[1] The sentiments of Colonel Hamilton on this point are reported by his colleague, Judge Yates, in the following terms: "To avoid

He also expressed his despair of the practicability of establishing a republican government over so extensive a country as the United States. He was sensible, at the same time, that it would be unwise to propose one of any other form. Yet "he had no scruple," he said, "in declaring that, in his private opinion, the British government was the best in the world, and that he doubted much whether any thing short of it would do in America." He descanted upon the securities against injustice, violence, and innovation, afforded, in the English system, by the permanent constitution of the House of Lords, and by the elevated and independent position of the monarch. He thence deduced the necessity of as permanent a tenure, as public opinion in this country would bear, of the leading branches of the new government. "Let one branch of the legislature," he said, "hold their places for life, or at least during good behavior. Let the executive also be for life."

In concluding, he expressed his conviction that "a great progress was going on in the public mind; that the people will, in time, be unshackled from their prejudices; and, whenever that happens, they will themselves not be satisfied at stopping where the plan brought forward by Mr. Randolph [the Virginia plan] would place them, but would

the evils deducible from these observations, we must establish a general and national government, completely sovereign, and annihilate State distinctions and State operations; and, unless we do this, no good purpose can be answered." — See Yates's Notes of Debates of Federal Convention (Albany edition), p. 132, 133.

be ready to go as far, at least, as he proposed." He then read a plan of government he had prepared, which, he said, he did not submit as a proposition to the convention, but as giving a correct sketch of his ideas, and to suggest the amendment which he should probably offer to the Virginia plan in the future stages of its consideration.[1]

[1] In the brief summary given above of Colonel Hamilton's speech, we have followed mainly the report of Mr. Madison, which, he tells us, was submitted to Colonel Hamilton, and sanctioned by him, with a few verbal alterations, which were made. Upon a careful collation of that report with Colonel Hamilton's own *brief*, preserved among his papers, as well as the sketch given of his speech by Judge Yates, we have been struck with the remarkable correspondence, in all essential points, between three distinct versions of so extensive an argument, each proceeding from a different hand.

Surely nothing could be more unworthy of any party than an attempt to misrepresent the political opinions of Colonel Hamilton; and as little consistent with propriety and the respect due to his character would it be, it appears to us, to wish a concealment of those opinions, whatever they were. That no injustice has been done him, in attributing to him a preference for monarchy and a distrust of republican government, seems to be established beyond all reasonable controversy by the candid and unambiguous statement of one — Mr. Gouverneur Morris — who was a most intimate friend and associate, belonged to the same political party, and enjoyed the very best opportunities, both in private and public intercourse, of knowing his real opinions.

Mr. Morris, in writing to Mr. Robert Walsh, on the 5th of February, 1811, says: "He [Colonel Hamilton] never failed, on every occasion, to advocate the excellence of, and avow his attachment to, monarchy." — "He disliked the Constitution [of the United States], believing all republican government to be radically defective;" and "he hated republican government, because he confounded it with democratical government." In a letter to Colonel Aaron Ogden, of 28th December, 1804, written a few months after the death of Colonel Hamilton, he says: "Our poor friend Hamilton bestrode his hobby to the great annoyance of his friends, and not without injury to himself. More a theoretical than a practical man, he was not sufficiently convinced that a system may be good in itself, and bad in relation to particular circumstances. He well knew that his favorite form was inadmissible, unless as the result of civil war; and I suspect that his belief in that which he

The plan of Colonel Hamilton proposed to vest the supreme legislative authority of the United States in two bodies, — the Assembly and the Senate, — with power "to pass all laws whatsoever," subject to the negative of the executive; the Assembly to be chosen by the people for three years; the Senate, by intermediate electors, to serve during good behavior, and, in addition to its equal participation in the general legislative authority, to have the sole power of declaring war. The supreme executive authority was to be vested in a chief magistrate, to be chosen by intermediate electors, and to serve during good behavior. He was to have an absolute negative on all laws about to be passed, and on the execution of all laws passed; to have the direction of war, when authorized or begun; to conclude treaties, with the approbation of the senate; to have the sole appointment of the chief officers of the executive departments, and, with the advice and consent of the Senate, to appoint all other officers, including ministers and ambassadors; and to have the power of pardoning all offences except treason, which he could not pardon without the concurrence of the Senate. He, with all other officers, was to be liable to impeachment for mal and corrupt conduct, and, on conviction, to be removed from office, and disqualified from holding any other place of trust or

called an approaching crisis arose from his conviction that the kind of government most suitable, in his opinion, to this extensive country, could be established in no other way." — See Sparks's Life of Gouverneur Morris, vol. III. pp. 260 and 262; and idem, p. 216–217.

profit. A national judiciary, both supreme and inferior, was to be established, with ample powers for the determination, in the first instance as well as on appeal, of all matters of general concern. All laws of the particular States, contrary to the laws and Constitution of the United States, were declared to be utterly void; and, "the better to prevent such laws being passed, the governor or president of each State shall be appointed by the general government, and shall have a negative upon the laws about to be passed in the State of which he is governor or president." Finally, it was provided that "no State should have any forces, land or naval; and the militia of all the States was to be under the sole and exclusive direction of the United States, the officers of which to be appointed and commissioned by them."

The convention now had presented for their consideration three distinct schemes of government: one purely *Federal*, founded upon the idea of preserving undiminished the sovereignty and equality of the States, and of constituting a special political agency in Congress for certain purposes, but still under the dependence and control of the States; another of a *consolidated* character, bottomed on the principle of a virtual annihilation of the State sovereignties and the creation of a central government, with a supreme and indefinite control over both individuals and communities; the third a mixed and balanced system, resting upon an agreed partition of the powers of sovereignty between the

States and the Union, — one portion to be vested in the Union for certain objects of common and national concern, the residue retained by the States for the regulation of the general mass of their interior and domestic interests. The last plan, for the convenience of designating it by a single term, was denominated national; but it would have been more accurately described by a compound epithet, — *federo-national*, — corresponding to the mixed elements which entered into its formation.[1]

Of the three schemes, the first and the last, — the New-Jersey and the Virginia plans, — however differing in other respects, were both based on republican principles. The second, Colonel Hamilton's plan, was marked by strong features of affinity and approximation to the monarchical and aristocratical systems of the Old World. The

[1] The unqualified term "national" was afterwards dropped by the convention. See post, chap. xxx. That the theory of a *divided sovereignty*, in the constitutional system of the United States, was perfectly familiar to the minds of the framers of the Constitution, is shown, not only by the letter of the convention transmitting the Constitution to Congress for submission to the States, but by a very interesting debate in the convention, on the subject of treason as committed against the United States and against a State; which see in Madison Debates, vol. III. pp. 1371–1376. In further illustration of this topic, see two very able papers written by Mr. Madison during the latter period of his life, — one on "Sovereignty," the other on "Nullification," — which will be found in M'Guire's Selection, pp. 370–375 and 407–415.

That the Constitution of the United States, in every stage of the process of its formation, was understood and designed to be of a composite character, *partly Federal and partly national*, is also abundantly shown by the debates of the convention. — See Madison Debates, vol. II. pp. 996, 1008, 1049, and 1102. Mr. Madison, in the 39th No. of the "Federalist," has given a lucid exhibition of this composite character of the government, by analyzing it in its various relations, and showing in which of those relations it is Federal, and in which national.

plan of Colonel Hamilton not being formally before the committee of the whole, no question was taken upon it. It seems quite certain that it met with but little favor in the convention. The number of its avowed advocates did not exceed three,— Colonel Hamilton himself, Mr. Read, of Delaware, and Mr. Gouverneur Morris, of Pennsylvania,— the last of whom, it must be borne in mind, was friendly to it only in a qualified sense; being much more inclined to the aristocratical than to the monarchical features of the plan, and accepting the latter, apparently, only in connection with and subordination to the former.[1]

On the 19th of June, after the three days' discussion above mentioned of the New-Jersey and Virginia plans, Mr. King, of Massachusetts, moved that "the committee do now rise, and report that they do not agree to the propositions offered by the Honorable Mr. Patterson; and that they report to the House the resolutions offered by the Honorable Mr. Randolph, heretofore reported from a committee of the whole."[2] The motion was carried by the votes of Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia, in the affirmative,— New York, New Jersey, and Delaware voting in the negative; and Maryland, divided. For some un-

[1] For the political creed of Mr. Morris, which, though coincident in several particulars with Colonel Hamilton's, was not identical with it, see, in addition to his speeches in the convention, his letters to Colonel Ogden and Mr. Walsh referred to in the preceding note.

[2] See Journal of the Federal Convention, p. 75.

explained reason, Connecticut separated, on this occasion, from the States supporting the New-Jersey plan; but it may well be conceived, that some features of that plan — especially the forbidding feature of the military coercion of a delinquent State — were repulsive to her delegation, and that they thought it wiser to take the chances of a satisfactory adjustment and compromise with the resolutions offered by Governor Randolph as a whole, than with those of Mr. Patterson.

NOTE.

The singularly minute coincidences between the draught of a Federal government communicated by Mr. Charles Pinckney, of South Carolina, to Mr. Adams, secretary of State, as the one offered by him in the convention at the very beginning of its session, and the Constitution as finally adopted after four months' deliberation, have naturally attracted great attention, and given rise to various and discordant interpretations. The most obvious inference from these coincidences, if the matter stood alone and disconnected from well-known concomitants, would be that the Constitution was mainly copied from Mr. Pinckney's draught, and that he was, therefore, virtually its author. But the original journal of the convention, and all the contemporary accounts of its proceedings which have come down to us, show that the Constitution was slowly and painfully evolved by deliberations on another and distinct set of propositions (those of the Virginia delegation), considered one by one, and modified, altered, and added to, until they were progressively moulded into the shape in which they stand in the Constitution. On the other hand, Mr. Pinckney's draught was never the text of discussion and consideration either in the committee of the whole or in the convention; and although his draught, as well as the New-Jersey plan which had been rejected, was referred *pro formâ*, after the reference of the modified Virginia resolutions, to the committee of detail charged with the duty of reporting a Constitution, it was not until the leading principles of the Constitution had been settled by the discussions that had taken place in the convention; and the committee of detail was expressly instructed to make their report "conformably to the proceedings aforesaid," — that is, to the resolutions already agreed to in the convention.

As the extraordinary coincidences referred to could not, therefore, be explained upon the hypothesis of the Constitution being framed after

the pattern of Mr. Pinckney's draught, the question arose whether the draught communicated to Mr. Adams was, in fact, the draught submitted by Mr. Pinckney to the convention. Mr. Pinckney himself does not venture to affirm directly that it was so. In his letter to the secretary of State of 30th December, 1818, he says: —

"I have already informed you that I have several rough draughts of the Constitution I proposed, and that they are all substantially the same, differing only in words and the arrangement of the articles. At the distance of nearly thirty-two years, it is impossible for me now to say which of the four or five draughts I have was the one; but enclosed I send you the one I believe was it."

The papers of Mr. Madison afford abundant materials to prove that the draught communicated to Mr. Adams could not have been the draught offered by Mr. Pinckney in the convention. Mr. Sparks, while preparing the biography of Mr. Gouverneur Morris, a leading and distinguished member, as we have seen, of the convention, addressed inquiries on this subject to Mr. Madison, who, in his reply of the 25th November, 1831, makes the following remarks: —

"The simple question is, whether the draught sent by Mr. Pinckney to Mr. Adams, and printed in the journal of the convention, could be the same with that presented by him to the convention on the 29th of May, 1787; and I regret to say that the evidence that that was not the case, is irresistible. Take, as a sufficient example, the important article [III.] constituting the House of Representatives, which, in the draught sent to Mr. Adams, besides being too minute in its details to be a possible anticipation of the results of the discussions, &c., of the convention on that subject, makes the House of Representatives the choice of *the people*. Now, the known opinion of Mr. Pinckney was, that that branch of Congress ought to be chosen by the *State legislatures*, and not immediately by the people. Accordingly, on the 6th day of June, not many days after presenting his draught, Mr. Pinckney, agreeably to previous notice, moved that, as an amendment to the resolution of Mr. Randolph, the term 'people' be struck out, and the word 'legislatures' be inserted, so as to read, 'Resolved, that the members of the first branch of the national legislature ought to be elected by the *legislatures* of the several States.'

"But what decides the point is the following extract from a letter from him to J. Madison, dated the 28th of March, 1789: 'Are you not, to use a full expression, abundantly convinced that the theoretical nonsense of an election of the members of Congress by the people in the first instance is clearly and practically wrong; that it will, in the end, be the means of bringing our councils into contempt; and that the legislatures are the only proper judges of who ought to be elected?'"

The motion of Mr. Pinckney referred to by Mr. Madison will be found entered on the journal of the convention in the very words cited; and the letter of Mr. Pinckney to him, from which he gives a literal extract as above, still exists on his files. Mr. Madison, in his

communication to Mr. Sparks, mentions other notable instances, where the draught sent to Mr. Adams corresponds with the Constitution, and in which it is shown by the record Mr. Madison kept of the debates of the convention that Mr. Pinckney had warmly opposed several of the provisions inserted by him in his communicated draught.

"Thus," Mr. Madison says, "in Article VIII. of the draught, provision is made for removing the president by impeachment; when it appears that in the convention, July 20th, he was opposed to any impeachability of the chief magistrate. In Article III. it is required that all money bills shall originate in the first branch of the legislature; and yet he voted [and argued], on the 8th of August [and again on the eleventh], for striking out that provision in the draught reported by the committee of detail on the 6th of the month. In Article V., members of each House are made ineligible to, as well as incapable of holding, any office under the Union, &c., as was the case at one stage of the Constitution; a disqualification disapproved and opposed by him on the 14th of August."

To these instances may be added yet another. In the 8th Article of the draught sent to Mr. Adams by Mr. Pinckney, it is provided that the president's power of appointing to office shall be, as in the Constitution, "with the consent of the Senate." But it appears from the debates reported by Mr. Madison, that, on the 7th of September, Mr. Pinckney expressed himself "against joining the Senate in appointments, except in the instance of ambassadors, who, he thought, ought not to be appointed by the president;" and this is in exact conformity, as we shall presently see, to the account he gave himself of his original draught in a pamphlet published by him in 1787–88.

A few years after the correspondence of Mr. Madison with Mr. Sparks, Judge W. A. Duer, of New York, author of a Treatise on the Constitution of the United States, struck, as Mr. Sparks had been, by the mysterious resemblance between Mr. Pinckney's draught sent to Mr. Adams, and the Constitution as finally adopted, also wrote to Mr. Madison on the subject. Mr. Madison, in his answer of the 5th of June, 1835, after repeating some of the proofs he had already given to Mr. Sparks to show that the draught sent to Mr. Adams could not have been the draught offered by Mr. Pinckney in the convention, referred Judge Duer to another curious source of evidence on the subject within his own reach.* Mr. Pinckney, it appears, very soon after the adjourn-

* Besides the letters of Mr. Madison to Mr. Sparks and Judge Duer, here referred to, he addressed a communication to Mr. Grimké, a distinguished citizen of Mr. Pinckney's own State, recapitulating, in answer to inquiries, the same conclusive proofs that the draught sent by Mr. Pinckney to Mr. Adams was not the draught offered by him in the convention. Alluding to the delicacy of the subject in its personal bearings, Mr. Madison, in his letter to Mr. Grimké, says, "I knew Mr. Pinckney well, and was always on a footing of friendship with him. But this consideration ought not to weigh against justice to others, as well as against truth, on a subject like that of the Constitution of the United States." — Manuscript Letter to T. S. Grimké, 6th January, 1834.

ment of the Federal Convention, published, in New York, a pamphlet, under the title of "Observations on the Plan of Government submitted to the General Convention on the 28th of May, 1787, by Charles Pinckney, &c., &c.," in which he gave a somewhat detailed account of the plan he had submitted to the convention. That pamphlet was still in existence among the collections of the New-York Historical Society; and, from a comparison with it of the draught sent to Mr. Adams, the following schedule of remarkable variations between the two was compiled by a friend of Mr. Madison, and by Mr. Madison communicated to Judge Duer:—

"Discrepancies noted between the plan of Mr. Charles Pinckney as furnished by him to Mr. Adams, and the plan presented to the convention as described in his pamphlet.

"The pamphlet refers to the following provisions as forming a part of the plan presented to the convention, which are not found in the plan furnished to Mr. Adams: 1. The executive term of office, seven years; 2. A council of revision; 3. A power to convene and prorogue the legislature; 4. For the junction or division of States; 5. For enforcing the attendance of members of the legislature; 6. For securing exclusive right to authors and discoverers."

"The plan, according to the pamphlet, provided for the appointment of all officers, except judges and ministers, by the executive, omitting the consent of the Senate required in the plan sent to Mr. Adams. Article IX., according to the pamphlet, refers the decision of disputes between the States to the mode prescribed under the articles of confederation; while Article VII., in the plan sent to Mr. Adams, gives to the Senate the regulation of the mode. There is no numerical correspondence between the articles as placed in the plan sent to Mr. Adams, and as noted in the pamphlet; and the latter refers numerically to more articles than are contained in the former.

"It is remarkable, that, although the plan furnished to Mr. Adams enumerates, with such close resemblance to the Constitution as adopted, certain [important] provisions, and among them the fundamental article relating to the House of Representatives, those provisions are *unnoticed* in the 'Observations on the Plan of Government submitted by him to the Convention;' while minor provisions, as that enforcing the attendance of members of the legislature, are commented on. I cite the following: 1. Election by the people of the House of Representatives. 2. The executive veto. 3. To subdue a rebellion in any State, on application of its legislature. 4. To provide such dock-yards and arsenals, and erect such fortifications, as may be required. 5. To establish post and military roads. 6. To declare the punishment of treason, which offence shall consist only in levying war against the United States, or any of them, or in adhering to their enemies. No person shall be convicted of treason but by the testimony of two witnesses. 7. No tax shall be laid on articles exported from the States." There is no notice whatever in the pamphlet,

it seems, of any of these leading provisions found in the draught sent to Mr. Adams.

This accumulation of proofs, drawn from so many various sources, leaves no room for any other conclusion than that the draught sent to Mr. Adams was not the draught presented by Mr. Pinckney to the convention. How, it may be asked, could Mr. Pinckney have fallen into so grave an error? Mr. Madison, who, in consigning his own record of the proceedings of the convention to posterity, could not have avoided noticing an apocryphal paper so closely connected with those same proceedings, has, with characteristic delicacy, suggested the following explanation: —

"The error was occasioned, possibly, by the loss of the document laid before the convention (neither that nor the resolutions offered by Mr. Patterson being among the preserved papers), and by a consequent resort for a copy to the rough draught, in which erasures and interlineations, following what passed in the convention, might be confounded, in part at least, with the original text, and, after a lapse of more than thirty years, confounded also in the memory of the author." *

It seems to have been an infirmity of Mr. Pinckney to be very avid of renown, which drew from General Washington, in a letter written shortly after the adjournment of the convention, the remark, that "Mr. C. P. is unwilling, I perceive by the enclosures contained in your letter, to lose any fame that can be acquired by the publication of his sentiments;" † and this infirmity may have betrayed him the more easily into the error of which Mr. Madison has suggested the amiable explanation given above, — an explanation, it is to be hoped, as well founded as it was amiable.

* See Appendix, No. 3, pp. v. vii., to third volume of Madison's Debates.

† The letter here referred to was addressed to Mr. Madison, under date of 22d of October, 1787, and will be found in Sparks's Washington, vol. IX. p. 273, 274. That the initials, C. P., were intended for Mr. Charles Pinckney, is rendered certain by Mr. Madison's answer of 28th October, 1787, published with the correspondence accompanying his Debates, &c., vol. II. pp. 652, 653, where the name is given at length. There is reason to believe, that the enclosures referred to by General Washington, and forwarded by Mr. Madison at the request of Mr. Pinckney, were, one of them the very *pamphlet* described in the text, containing "Observations on the Plan of Government, &c.," — and the other a *sheet*, containing "A Speech of Mr. Charles Pinckney, in Answer to Mr. Jay, Secretary for Foreign Affairs, on the Question of a Treaty with Spain, delivered in Congress, 16th August, 1786." The enclosures are thus described by Mr. Madison, in his letter of 14th October, 1787, transmitting them to General Washington: "I add a pamphlet which Mr. Pinckney has submitted to the public, or, rather, as he professes, to the perusal of his friends; and a printed sheet, containing his ideas on a very delicate subject, — too delicate, in my opinion, to have been properly confided to the press. He conceives that his precautions against any further circulation of the piece than he himself authorizes, are so effectual as to justify the step. I wish he may not be disappointed. In communicating a copy to you, I fulfil his wishes only."

CHAPTER XXX.

Virginia Propositions, as reported by Committee of the Whole, acted on in Convention — Motion of Mr. Lansing, of New York, in Favor of Single Legislative Body and Equal Representation of all the States, gives rise to Animated Discussion — Colonel Mason, Luther Martin, Sherman, Wilson — The Motion negatived — Proposition of Mr. Ellsworth to refer Compensation of Members of Congress to State Legislatures, rejected — Mr. Madison insists on Restriction to prevent Members from voting themselves an Increase of Pay during their Current Term of Service — Question on Duration of Senatorial Office — Able and Earnest Speech of Mr. Madison for giving it Sufficient Stability to countervail Democratic Tendencies — Renewed Struggle for Equal Representation of the States in both Branches of the National Legislature — Vehement Speech of Mr. Luther Martin — Temperate and Dignified Reply of Mr. Madison — Discussion continued between Mr. Wilson and Mr. Sherman — Dr. Franklin moves for Daily Religious Services in the Convention — Debate on Question of Representation resumed — Dr. Johnson, Mr. Ellsworth, Mr. Read, Mr. Gorham, Colonel Hamilton, Mr. Gerry — Second Speech of Mr. Madison — Motion for Equal Representation in First Branch of Legislature rejected — Mr. Ellsworth moves Equal Representation in Second Branch as a Compromise — Debate between Mr. Ellsworth and Mr. Wilson — Mr. Madison replies to Mr. Ellsworth — Shows that the Real Division of Interests in the United States is not between the Large and the Small States, but between the Northern and the Southern — Constitutional Means of Defence demanded by this Difference of Interest — Discussion continued — Mr. Sherman; Mr. Davie, of North Carolina; Dr. Franklin; Mr. Dayton, of New Jersey — Altercation between Mr. King, of Massachusetts, and Mr. Bedford, of Delaware — Convention equally divided

on Mr. Ellsworth's Proposition — General Pinckney, of South Carolina, moves Appointment of Committee to consider and report a Plan of Compromise.

We have now arrived at a critical period in the deliberations of the convention. Notwithstanding the large vote by which the New-Jersey plan had been rejected in committee of the whole, we shall see its friends rallying upon detached principles of their project, and giving renewed battle to their opponents from time to time, until the convention was convulsed by the violence of the struggle, and the most serious apprehensions were entertained of the total abortion of its labors.

The nineteen resolutions, forming the Virginia plan, being reported back to the House by the committee of the whole in the same form in which they had been before reported, were now taken up, one by one, in the convention for consideration and revision. On the consideration of the first resolution, affirming the expediency of "a national government, with a supreme legislative, executive, and judiciary," the word "national" was struck out, by unanimous consent, as unnecessary and liable to misconstruction, and the phrase "government of the United States," substituted in its place. The strong declarations made by Colonel Hamilton the day before, with regard to the extinction of the State governments, rendered the friends of the Virginia resolutions anxious to guard themselves from any suspicion of participating in such views; and Mr. Wilson, of Pennsylvania, a leading champion

of the resolutions, opened the discussion by an earnest and emphatic disclaimer of a policy which no one could more thoroughly disapprove than himself. Governor Randolph also assented, without hesitation, to the suggestion to drop the word "national," and substitute the title "United States;" and the same substitution was carried, with general acquiescence, through all the resolutions in which the term "national" had been originally used, though in a sense widely removed from any idea of a consolidated government.

When the second resolution, declaring that the proposed legislature ought to consist of two branches, was taken up, Mr. Lansing, of New York, moved to amend it by substituting a declaration that "the powers of legislation ought to be vested in the United States in Congress." The double effect of this amendment would be to give an equal representation to all the States, as well as to supersede the division of the legislative body into two branches; and the proposition, therefore, again brought up the issue between the New-Jersey and the Virginia plan. Colonel Mason, in answering the arguments by which Mr. Lansing sustained his proposition, made a vigorous and spirited speech in support of the general principles of the resolutions reported by the committee of the whole.

"Is it to be thought," he said, "that the people of America, so watchful over their interests, so jealous of their liberties, will give up their all — will surrender both the sword and the purse — to

the same body, and that, too, not chosen by themselves? They never will; they never ought. Will they trust such a body with the regulation of their trade; with the regulation of their taxes; with all the other great powers which are in contemplation? Will they give unbounded confidence to a secret journal; to the intrigues, to the factions, which, in the nature of things, appertain to such an assembly? If any man doubt the existence of these characters of Congress, let him consult their journals for the years 1778, 1779, and 1780."

"Much has been said," he remarked, "of the unsettled state of the mind of the people. He believed the mind of the people of America, as elsewhere, was unsettled on some points, but settled on others. In two points, he was sure, it was well settled: first, in an attachment to republican government; secondly, in an attachment to more than one branch in the legislature."

Against the objection brought by Mr. Lansing to the Virginia plan for the power it proposed to vest in the central legislature of negativing the laws of the States in certain cases, Colonel Mason set off, with great effect, that feature of the New-Jersey plan which provided for the military coercion of delinquent States by the government of the Union.

"It was acknowledged by Mr. Patterson," he said, "that his plan could not be enforced without military coercion? Does he consider the force of this concession? The most jarring elements of

nature — fire and water themselves — are not more incompatible than such a mixture of civil liberty and military execution. Will the militia march from one State into another, in order to collect the arrears of taxes from delinquent members of the republic? Will they maintain an army for this purpose? Will not the citizens of the invaded State assist one another, till they rise, as one man, and shake off the Union altogether?"

In concluding, he said, "He took this occasion to declare, that notwithstanding his solicitude to establish a national government, he never would agree to abolish the State governments, or render them absolutely insignificant. They were as necessary as the general government, and he would be equally careful to preserve them. He was aware of the difficulty of drawing the line between them, but hoped it was not insurmountable."

The proposition of Mr. Lansing was supported with fiery zeal by Mr. Luther Martin, and in a tone of moderation and temperance by Mr. Sherman. They were both answered by the cool and enlightened reason of Mr. Wilson, when the question was taken, and Mr. Lansing's proposition rejected by the votes of Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia, — Connecticut now joining New York, New Jersey, and Delaware, in voting for it; and Maryland, divided. On the following day, after a renewed discussion upon the subject, distinguished by its exemplary deliberative tone, between Dr.

Johnson, of Connecticut, on the one side, and Mr. Wilson and Mr. Madison on the other, the second resolution, as reported by the committee of the whole, was carried by a majority of seven States, including Connecticut, — leaving New York, New Jersey, and Delaware alone in the negative; and Maryland, as usual, divided.

The third resolution, relating to the mode of election, term of service, compensation, and disqualification for other offices, of the first branch of the legislature, came next under consideration. A motion of General Pinckney, that, instead of being elected by the people, the first branch "should be elected in such manner as the legislature of each State should direct," received the votes of the four States favoring the New-Jersey plan; but the election by the people was finally carried by the votes of nine States. Mr. Ellsworth, seconded by Mr. Strong, of Massachusetts, moved to reduce the term of service of the first branch, which had been fixed by the committee of the whole, as we have seen, at three years, to one year. The motion was opposed by Mr. Madison, Colonel Mason, and Colonel Hamilton, on different grounds of objection, which were respectively assigned by them; and, finally, on the motion of Governor Randolph, the term of service was limited to two years by the general concurrence of the convention.

With regard to compensation, the resolution, as reported by the committee of the whole, provided

that the members of the legislature should receive fixed stipends, to be paid out of the national treasury. Mr. Ellsworth, seconded by Mr. Sherman, moved to strike out "national treasury," and substitute "treasuries of the several States," so as to place the compensation of members of the general legislature under the control of the State legislatures. The amendment was opposed with equal energy, and force of reason, by Mr. Gorham, Mr. Randolph, Mr. Wilson, Mr. Madison, and Colonel Hamilton, as producing a dependence of the general upon the State legislatures, wholly inconsistent with the fundamental principles on which an efficient and respectable government for the whole Confederacy should rest. The proposition was negatived, — four States voting for it, five against it, and two divided.

The other part of this clause of the resolution, which contemplated fixed stipends, to be adjusted by some permanent standard and not to be dependent upon the will of the legislative body itself, was a principle of public morality as well as policy, to which Mr. Madison attached great importance; and it was upon his motion that it was originally engrafted upon the resolution reported by the committee of the whole. He held that "it would be indecent for the members of the legislature [who had so direct a personal interest in the question] to put their hands into the public purse for the sake of their own pockets." As a difference of opinion, however, arose as to the feasibility of ad-

justing a satisfactory permanent standard, it was agreed to substitute the phrase "adequate compensation," for "fixed stipend," and to leave the practicability of fixing the compensation, by some permanent standard, to be considered when the Constitution should be drawn out into detail.[1]

By the last clause of the resolution under consideration, members of the first branch of the legislature were declared to be ineligible to any other office during the continuance of their legislative term, and for one year thereafter. Mr. Gorham, of Massachusetts, moved to strike out the whole of the clause, as likely to be attended with injury and embarrassment to the public service. He was sustained by Mr. King and Mr. Wilson; but the motion was warmly opposed by Colonel

[1] The principle which Mr. Madison labored to invest with a constitutional sanction, he made the inflexible rule of his own conduct. While a member of the legislature of Virginia, he refused to receive an increase of pay voted by that body to its own members, as appears from certain memoranda communicated by him, confidentially, to a friend; and, in 1789, one of the amendments of the Constitution which he most earnestly pressed upon Congress, and which he succeeded in carrying through both branches, though it unfortunately failed to receive afterwards the requisite sanction of three-fourths of the States, was a provision restraining Congress from voting themselves an increase of pay, to take effect during the current term of representative service. It is a circumstance which cannot fail to attract attention, that the vote of the thirteen original States on this amendment, when submitted to them for ratification, was, with a single exception on either side, divided by a well-known geographical boundary, — all the six States south of Mason and Dixon's Line, except Georgia, voting for it; all the seven States north of that line, except Rhode Island, voting against or declining to vote for it. The gross abuses which we have seen since practised, in this matter, make it a subject of deep regret that no constitutional barrier has yet been raised against them.

Mason, who "considered the disqualification in question as a corner-stone in the fabric" of the proposed government. Mr. Gorham's motion being lost by an equal division of the States, Mr. Madison proposed, instead of making members of the legislature ineligible to all offices whatever for the period of their legislative term and one year thereafter, to confine the ineligibility to "such offices only as should be established, or the emoluments thereof augmented, by the legislature of the Union during the time of their being members."

This proposition Mr. Madison submitted "as a middle ground between an eligibility in all cases and a total disqualification. The unnecessary creation of offices and increase of salaries were, he supposed, the great evils experienced; and, if the door were shut against them, it might properly be left open for the appointment of members to other offices, as an encouragement to the legislative service." The proposition, on this occasion, received the votes of only two States; but in a future stage of the convention, as we shall hereafter see, it was sanctioned by a majority of the States, and finally became a part of the Constitution. The ineligibility of members of the legislature to other offices, *during the continuance of their legislative term*, was now carried by the vote of eight States to two; but the disqualification *for one year after*, so far as members of the first branch were concerned, was rejected by six States to four.

The next resolution related to the mode of elec-

tion, term of service, and other organic conditions of the second or senatorial branch of the legislature. The contest was renewed with regard to its election by the State legislatures; which, however, was finally decided in the affirmative by a large majority of the States. Various propositions were then made to change the term of service of the senatorial branch from seven years, at which it had been fixed by the committee of the whole, to four, five, six, and nine years.

Mr. Madison, who was deeply impressed with the conviction that the success of republican government in America depended, in a vital degree, on imparting sufficient firmness and stability to some moderating power in the State, serving as a counterpoise to the democratic element, made an impressive and enlightened appeal to the convention in favor of giving adequate duration to the senatorial office. A Plato, an Aristotle, or a Cicero, expounding the principles of their favorite republican systems, might well have spoken in the language of wisdom and philosophy used by him on this occasion.

"In order to judge," he said, "of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were, first, to protect the people against their rulers; secondly, to protect the people against the transient impressions into which they themselves might be led. A people, deliberating in a temperate moment, and with the experience of other nations

before them, on the plan of government most likely to secure their happiness, would first be aware that those charged with the public happiness might betray their trust. An obvious precaution against this danger would be to divide the trust between different bodies of men, who might watch and check each other.

"It would next occur to such a people," he said, "that they themselves were liable to temporary errors," from want of information, fickleness, or passion; that a numerous body of representatives, chosen for short terms, was subject to the same defects; and that an appropriate security against these sources of error and danger would be to select a body of enlightened citizens, whose limited number, and greater firmness arising from a longer official tenure, might seasonably interpose against mistaken or impetuous counsels.

He then proceeded: "It ought, finally, to occur to a people deliberating on a government for themselves, that, as different interests necessarily result from the liberty meant to be secured, the major interest might, under sudden impulses, be tempted to commit injustice on the minority. In all civilized countries, the people fall into different classes, having a real or supposed difference of interests. There will be creditors and debtors, farmers, merchants, and manufacturers. There will be, particularly, the distinction of rich and poor. No agrarian attempts have yet been made in this country; but symptoms of a levelling spirit, as we have under-

stood, have sufficiently appeared, in a certain quarter, to give notice of the future danger.

"How is this danger to be guarded against, on the republican principle? How is the danger, in all cases of interested coalitions to oppress the minority, to be guarded against? Among other means, by the establishment of a body in the government sufficiently respectable for its wisdom and virtue to aid, on such emergencies, the preponderance of justice, by throwing its weight into that scale. Such being the objects of the second branch in the proposed government, he thought a considerable duration ought to be given to it."

He concluded with this impressive admonition: "As it was more than probable that we are now digesting a plan which, in its operation, would decide for ever the fate of republican government, we ought not only to provide every guard to liberty that its preservation could require, but be equally careful to supply the defects which our own experience had particularly pointed out."[1]

On putting the question on the several periods of service proposed, it was determined by a majority of the States to fix the term at six years; that number being more convenient than seven for division and adaptation to a biennial rotation of members,

[1] The necessity of a firm and stable senate, as a republican counterpoise and corrective of the inherent tendencies of democracy, was among the deepest of Mr. Madison's political convictions. The views here expressed were afterwards amplified and powerfully presented by him, in a great variety of lights, in the 62d and 63d Nos. of the "Federalist."

which was, at the same time, made a principle of the senatorial organization, in order to guard against any abrupt and thorough change in the composition and spirit of the body.

The fifth resolution, declaring that "each branch ought to possess the right of originating acts," was then taken up, and passed by a general vote without opposition.

This brought the convention to the sixth resolution, defining the character and extent of the powers proposed to be vested in the legislature of the Union. But as the opinions of members with regard to those powers might depend, in no small degree, on the settlement of the rule of suffrage in the two branches, it was moved and agreed to postpone the consideration of the sixth resolution for the present, and to proceed at once to the seventh and eighth resolutions, which involved the exciting question of the equal or proportional representation of the States.

The discussion commenced on the seventh resolution, which related to the first branch of the legislature, and declared that "the right of suffrage in that branch ought not to be according to the rule established by the articles of confederation [each State to have one vote], but according to an equitable ratio of representation," corresponding to the numbers of inhabitants of a certain description in the several States. It was moved by Mr. Lansing, of New York, and Mr. Dayton, of New Jersey, to strike out "not" in this resolution, so

as to affirm that the right of suffrage in the first branch ought to be according to the rule established by the articles of confederation.

The debate was opened by Mr. Luther Martin, of Maryland, who spoke with great vehemence and diffuseness, occupying one entire day and a considerable portion of the next with his extended remarks. He insisted, at great length, on the inherent sovereignty and independence of the States, as a principle of public law; pronounced the plan of proportional representation, laid down in the resolutions reported by the committee of the whole, a system of slavery for the ten smaller States, placing them at the mercy of the three larger ones; and declared, that sooner than submit to it, he would see the Union dissolved, and partial confederacies take its place.

This discursive harangue was replied to with great dignity, and with his accustomed largeness and elevation of views, by Mr. Madison.

"He was much disposed," he said, "to concur in any expedient not inconsistent with fundamental principles, that could remove the difficulty concerning the rule of representation; but he could neither be convinced that the rule contended for was just, nor that it was necessary for the safety of the small States against the larger. The fallacy of the reasoning drawn from the equality of sovereign States, in the formation of compacts, lay in confounding mere treaties, in which were specified certain duties to which the parties were to be bound,

and certain rules by which their subjects were to be reciprocally governed in their intercourse, with a compact by which an authority was created, paramount to the parties, and making laws for the government of them.

"If France, England, and Spain were to enter into a treaty for the regulation of commerce with the Prince of Monaco, and four or five other of the smallest sovereigns of Europe, they would not hesitate to treat as equals and to make the regulations reciprocal. Would the case be the same, if a council were to be formed of deputies from each, with authority and discretion to raise money, levy troops, determine the value of coin, &c.? Would thirty or forty millions of people submit their fortunes into the hands of a few thousand? If they did, it would only prove that they expected more from the terror of their superior force than they feared from the selfishness of their feeble associates.

"That the rule contended for is not necessary to secure the small States against the large States, he conceived to be equally obvious. Was a combination of the large States dreaded? This must proceed from some interest common to Virginia, Massachusetts, and Pennsylvania, and distinguishing them from the other States; or from the mere circumstance of similarity of size. Did any such common interest exist? In point of situation, they could not have been more effectually separated from each other by the most jealous citizen of the most jealous States. In point of manners, religion,

and the other circumstances which sometimes beget affection between different communities, they were not more assimilated than the other States. In point of the staple productions, they were as dissimilar as any three other States in the Union. The staple of Massachusetts was fish; of Pennsylvania, flour; of Virginia, tobacco. Was a combination to be apprehended from the mere circumstance of equality of size? Experience suggested no such danger. The journals of Congress did not present any peculiar association of these States in the votes recorded."

He then proceeded to show, that, if dangers were apprehended from the larger States singly, the true policy of the smaller States consisted in the establishment of an efficient general government, acting alike on all the members of the Confederacy, large as well as small.

"Were the large States deemed formidable, singly, to their smaller neighbors? On this supposition, the latter ought to wish for such a general government as will operate, with equal energy, on the former and on themselves. The more lax the band, the more liberty the larger will have to avail themselves of their superior force. Here, again, experience was an instructive monitor. What is the situation of the weak, compared with the strong, in those stages of civilization in which the violence of individuals is least controlled by an efficient government? The heroic period of ancient Greece, the feudal licentiousness of the

Middle Ages of Europe, the existing condition of the American savages, answer this question. What is the situation of the minor sovereigns in the great society of independent nations, in which the more powerful are under no control but the nominal authority of the law of nations? Is not the danger to the former exactly in proportion to their weakness?"

The discussion was continued by Mr. Wilson and Mr. Sherman, — the former in support of the resolution reported by the committee of the whole, the latter in opposition to it. The question, at the request of the delegates of New York, was postponed till the next day to give time for the attendance of an absent member, — Governor Livingston of New Jersey, — whose presence was necessary to constitute a sufficient representation of his State to give its vote. It was in this stage of the proceedings that Dr. Franklin, painfully impressed with the wide and apparently irreconcilable discordance of views and opinions which had been manifested in the convention, and the serious consequences it seemed to threaten, invoked, with great solemnity, the influence of religious services to calm and enlighten their counsels.

"In this situation of the convention," he said, "groping, as it were, in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understand-

ing? In the beginning of the contest with Great Britain, when we were sensible of danger, we had daily prayers in this hall for divine protection. Our prayers were heard, and they were graciously answered. I have lived, sir, a long time; and the longer I live, the more convincing proofs I see of this truth,—that God governs in the affairs of men. And, if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid?

"We have been assured, sir, in the sacred writings, that, 'except the Lord build the house, they labor in vain that build it.' I firmly believe this; and I also believe, that, without his concurring aid, we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little partial local interests; our projects will be confounded; and we ourselves shall become a reproach and by-word down to future ages: and, what is worse, mankind may hereafter, from this unfortunate instance, despair of establishing government by human wisdom, and leave it to chance, war, and conquest."

He then moved, that "henceforth prayers, imploring the assistance of Heaven and its blessings on our deliberations, be held in this assembly every morning before we proceed to business, and that one or more of the clergy of this city be requested to officiate in that service." This proposition, so becoming in itself and urged with such solemn and impressive effect by its venerable

mover, was not acted on, from an apprehension, that, as the convention had not hitherto opened its daily sessions with religious services, a recurrence to them now would raise uneasiness and alarm in the public mind with regard to the issue of its deliberations, concerning which much disquietude was already felt. Such are the difficulties — not less, undoubtedly, in affairs of State than those of private life — of retracing a wrong step when it has once been taken.

On the following day, — the 29th of June, — the discussion on the seventh resolution was resumed, and became more general, — Dr. Johnson, Mr. Ellsworth, and Mr. Read taking part in it in support of the claim of the smaller States to equal representation with the large; and Mr. Gorham, Colonel Hamilton,[1] and Mr. Gerry, in opposition to the pretension. Mr. Madison again spoke with great earnestness: —

"He entreated the gentlemen representing the small States to renounce a principle which was confessedly unjust; which could never be admitted; and which, if admitted, must infuse mortality into a constitution which we wished to last for ever. He prayed them to ponder well the consequences of suffering the Confederacy to go to pieces.

"He pointed out to them, as one of the certain consequences of a dissolution of the Confederacy,

[1] From the period of this debate, in which he bore a part, Colonel Hamilton was absent from the convention until the 13th of August, when he resumed his seat. — See Madison Debates, p. 992.

that the mutual jealousies and contentions among the severed States would necessitate the establishment of strong military governments in each, fatal to the internal liberty of all.

"The same causes," he said, "which have rendered the Old World the theatre of incessant wars, and have banished liberty from the face of it, would soon produce the same effects here. The weakness and jealousy of the small States would quickly introduce some regular military force against sudden danger from their powerful neighbors. The example would be followed by others, and would soon become universal. In time of actual war, great discretionary powers are constantly given to the executive magistrate. A standing military force, with an overgrown executive, will not long be safe companions to liberty.

"These consequences, he conceived, were to be apprehended, whether the States should run into a total separation from each other, or should enter into partial confederacies. Either event would be truly deplorable; and those, who might be accessory to either, could never be forgiven by their country nor by themselves."

The question was then taken, on the proposition of Messrs. Lansing and Dayton, for an equal representation of the States in the first branch of the legislature, and decided against it by the votes of six States to four, and one divided, — Connecticut, New York, New Jersey, and Delaware being in favor of it, Maryland divided; and Massa

chusetts, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia against it.

The defeat sustained by the deputies of the small States, in regard to the representation in the first branch of the legislature, only made them the more determined and inflexible in demanding an equal suffrage in the second. As soon as the foregoing vote was announced, Mr. Ellsworth moved to amend the eighth resolution, which was next taken up for consideration, by declaring that "the rule of suffrage in the second branch ought to be the same with that established by the articles of confederation." He presented his amendment as the only ground on which a compromise could take place. "Of the Eastern States, Massachusetts," he said, "was the only one that would listen to a proposition for excluding the States, as equal political societies, from an equal voice in both branches. The others would risk every consequence, rather than part with so dear a right," which, in one branch at least, he held to be "an essential power of self-defence to the smaller States. The existing confederation being founded on the equality of the States in the article of suffrage, he asked if it was meant to pay no regard to this antecedent plighted faith."

After a very pointed and able reply to Mr. Ellsworth by Mr. Wilson, and an animated rejoinder by Mr. Ellsworth, Mr. Madison addressed the convention in a speech, a few citations from which will best explain the course he felt it his duty to

pursue on a question of such peculiar delicacy and importance.

"He did justice," he said, "to the able and close reasoning of Mr. Ellsworth, but must observe that it did not always accord with itself. On another occasion, the large States were described as the aristocratic States, ready to oppress the small. Now the small are the House of Lords, requiring a negative to defend them against the more numerous Commons. Mr. Ellsworth had also erred in saying, that no instance had existed in which confederated States had not retained to themselves a perfect equality of suffrage. Passing over the German system, in which the King of Prussia has nine voices, he reminded Mr. Ellsworth of the Lycian confederacy, in which the component members had votes proportioned to their importance, and which Montesquieu recommends as the fittest model for that form of government."

In reply to the appeal of Mr. Ellsworth to the faith plighted in the existing Federal compact, he remarked "that the party claiming from others an adherence to a common engagement ought, at least, to be guiltless itself of a violation. Of all the States, however, Connecticut was perhaps least able to urge this plea. Besides the various omissions to perform the stipulated acts, from which no State was free, the legislature of that State had, by a pretty recent vote, positively *refused* to pass a law for complying with the requisitions of Con-

gress, and had transmitted a copy of the vote to Congress."

With regard to Mr. Ellsworth's argument, that an equality of votes in the second branch was a necessary power of self-defence to the smaller States, Mr. Madison assented to the justice of the general principle, that, where there is a peculiar interest — whether in any class of citizens or any description of States — exposed to danger of attack, there ought to be given a constitutional power of defence. But he denied, for the reasons he had before stated, and which had not been satisfactorily answered, that the smaller States were in any serious danger of encroachment from the larger.

"The States," he said, "were divided into different interests, not by their difference of size, but by other circumstances, the most material of which resulted partly from climate, but principally from the effects of their having or not having slaves. These two causes concurred in forming the great division of interests in the United States. It did not lie between the large and small States. It lay between the Northern and Southern; and, if any defensive power were necessary, it ought to be mutually given to these two interests.

"He was so strongly impressed with this important truth, that he had been casting about in his mind for some expedient that would answer the purpose. The one which had occurred was, that, instead of proportioning the votes of the States in

both branches to their respective numbers of inhabitants, computing the slaves in the ratio of five to three, they should be represented in one branch, according to the number of free inhabitants only; and, in the other, according to the whole number, counting the slaves as well as free. By this arrangement, the Southern scale would have the advantage in one House, and the Northern in the other. He had been restrained from proposing this expedient by two considerations. One was his unwillingness to urge any diversity of interests on an occasion where it is but too apt to arise of itself: the other was the inequality of powers that must be vested in the two branches, and which would destroy the equilibrium of the [rival] interests."

This was the first time that the real division of interests in the Confederacy — a division of interests which it was absolutely necessary, in any wise and permanent adjustment of political power, to keep in mind — was brought into view before the convention. Mr. Madison had become familiar with its secret and potent operation in the proceedings of the old Congress; and one of the most serious objections he now felt to giving the States an equal vote in the senatorial branch arose, as we shall hereafter see, from the "perpetuity it would give to the preponderance of the Northern over the Southern scale,"[1] if the Confederacy remained constituted, territorially, as it then was. This con-

[1] See Madison Debates, vol. II. p. 1104.

sideration, concurring with what he deemed a fundamental principle of political justice, — that, in a government intended to operate directly on the people, unequal portions of the people should not be permanently invested with equal portions of the power of the whole, — led him, in common with a majority of the delegates of Virginia, steadily to oppose the claim of the smaller States to an equal vote in either branch of the general legislature, so long as the question was an open one in the deliberations of the convention.[1]

The debate on Mr. Ellsworth's proposition was continued with much earnestness by the mover, by Mr. Sherman, Mr. Davie, Mr. Wilson, Dr. Franklin, Mr. Dayton, Mr. Luther Martin, Mr. Madison,[2] Mr. King, and Mr. Bedford of Delaware. Between the two last-named gentlemen, the discussion assumed a tone of unusual vivacity.

"We have been told with a dictatorial air," said Mr. Bedford, "this is the last moment for a fair trial in favor of a good government. It will be

[1] Colonel Mason, who finally voted in favor of allowing the small States an equal vote in the Senate as a matter of compromise, was, on principle, opposed to it. He said distinctly, "he was a friend to proportional representation in both branches, but supposed some points must be yielded for the sake of accommodation." — Madison Debates, vol. II. p. 1042.

[2] It was in the course of this debate, 30th of June, that Mr. Madison, while resisting the equal representation of the States in the second branch of the legislature, which he did not consider necessary as a defence for the rights of the States, declared, emphatically, "*he would preserve the State rights as carefully as the trial by jury.*" — Madison Debates, vol. II. p. 1012. Judge Yates reports him as saying, in addition, "I am willing to go as far as my honorable colleague [Colonel Mason]." — See Yates's Debates, p. 197.

the last, indeed, if the propositions reported from the committee go forth to the people. He was under no apprehensions. The large States dare not dissolve the Confederacy. If they do, the smaller ones will find some foreign ally of more honor and good faith, who will take them by the hand and do them justice."

Mr. King replied, "it was not he that had used a dictatorial language. This intemperance had marked the honorable gentleman himself. It was not he who, with a vehemence unprecedented in that House, had declared himself ready to turn his hopes from our common country, and court the protection of some foreign hand. This was the language of the honorable member himself. He was grieved that such a thought had entered his heart. He was more grieved that such an expression had dropped from his lips. The gentleman could only excuse it to himself on the score of passion. For himself, whatever might be his distress, he would never court relief from a foreign power."

The question was, at length, taken; and Mr. Ellsworth's motion was lost by an equal division of the States, — Connecticut, New York, New Jersey, Delaware, and Maryland voting for it; Massachusetts, Pennsylvania, Virginia, North Carolina, and South Carolina, against it: and Georgia, hitherto voting with the States opposed to equality of suffrage, now divided. The convention being thus brought to a stand by an equal array of opposing forces on a question involving such

important issues, and on the harmonious solution of which the farther progress of its labors seemed to depend, a motion was made by General Charles Cotesworth Pinckney to appoint a committee, consisting of one member for each State, to consider and report, if possible, some plan of compromise. The motion was sustained by Mr. Gouverneur Morris, one of the deputies of Pennsylvania, who took the occasion to bring before the convention, with an eccentric ability characteristic of him, his favorite idea of constituting the second branch of the legislature by making it a corps for life, to be chosen from the Union at large by the chief executive magistrate, and to be composed of men of fortune receiving no pay for their public services.

The proposition of General Pinckney was agreed to, two of the smaller States only dissenting; and a committee was elected by ballot, consisting of Mr. Gerry, of Massachusetts; Mr. Ellsworth, of Connecticut; Mr. Yates, of New York; Mr. Patterson, of New Jersey; Dr. Franklin, of Pennsylvania; Mr. Bedford, of Delaware; Mr. Martin, of Maryland; Colonel Mason, of Virginia; Mr. Davie, of North Carolina; Mr. Rutledge, of South Carolina; and Mr. Baldwin, of Georgia. That time might be given for the deliberations of the committee, as well as to afford to such members as desired it the opportunity of joining in the Celebration of the Anniversary of National Independence, the convention adjourned from the 2d to the 5th of July.

CHAPTER XXXI.

Committee of Compromise make their Report — Proceedings of Convention on Report of Committee — Apportionment among the States of Representatives in First Branch of Legislature — Mr. Williamson, of North Carolina, proposes to include Three-fifths of the Slaves in the Rule of Apportionment — Debate between Mr. Gouverneur Morris and Mr. Madison — Mr. Williamson's Motion rejected — Indignant Feeling of the Delegates of the Southern States — Convention reconsider and change their Decision — Struggle for Geographical Ascendency — Mr. Gouverneur Morris declares it to be the Policy of the Middle States to join the Eastern States in this Struggle for Power — Answered by Mr. Wilson — Early Jealousy of the Northern States with regard to the Rising States of the West — Equal Representation in the Second Branch of the Legislature — Discussion upon it renewed with Great Warmth — Mr. Wilson, Mr. Luther Martin, Mr. Charles Pinckney, Mr. Dayton, Mr. Sherman, Mr. Gerry, Mr. King, Mr. Strong — Speeches of Mr. Madison and Mr. Wilson — Report of Committee of Compromise, as amended, finally agreed to by Vote of Five States to Four, and One divided — Convention resume their Deliberations on Propositions reported by Committee of the Whole — Proposed Negative of Congress on State Laws superseded by Provision for Judiciary Control — Proposed Appointment of Executive by National Legislature strongly objected to, but maintained — Proposition to refer Election directly to People receives Vote of only One State — Sentiments of Colonel Mason upon it — Ineligibility a Second Time, hitherto an inseparable Part of the Provision for electing Executive by National Legislature, stricken out by Vote of Convention — Dr. M'Clurg, of Virginia, moves, as the only Means left of Guarding the Mutual Independence of the two Departments, that the Executive should hold during Good Behavior — Course of Virginia Delegation, and of Mr. Madison par-

ticularly, on this Motion — The Motion has the Intended Effect of Re-instating Ineligibility a Second Time as an Incident to Legislative Appointment of the Executive — Various other Modes of electing the Executive proposed and discussed — Choice by Lot suggested — Convention, without being able to reach any Satisfactory Conclusion on the Subject, acquiesce, for the present, in the Proposed Appointment by the National Legislature — All the Remaining Propositions, reported by Committee of the Whole, adopted with little or no Alteration by the Convention, and with the other Resolutions of the Convention referred to a Committee of Detail, to report a Constitution conformably to them.

On the 5th of July, the day to which the convention had adjourned, the committee of compromise made their report, recommending two propositions, to be simultaneously agreed to as mutual conditions: first, that, in the popular branch of the legislature, each of the States be allowed one representative for every forty thousand inhabitants of the description mentioned in the seventh resolution of the committee of the whole (that is, counting all the white inhabitants and three-fifths of the black); that each State, not having a number of inhabitants equal to the proposed ratio, should have one representative; and that all money bills originate in the representative branch, and be not altered or amended in the other branch: secondly, that, in the senatorial branch, each State have an equal vote.

On the presentation of the report, a free expression of opinion took place in the convention with regard to the general merits of the compromise proposed. Mr. Madison thought the exclusive

privilege of originating money bills in the first branch was a concession of no value to the larger States; and that the only alternative left to the convention was to adhere to the principles of justice at the risk of displeasing the smaller States, or to yield to the demands of those States at the certain sacrifice of justice. For himself, he could not hesitate as to the option he ought to make.

Mr. Gouverneur Morris disapproved of both the form and the substance of the report. He thought the whole aspect of it wrong. "It looked," he said, "as if we were assembled to truck and bargain for our particular States." Should the larger States determine upon a plan which is reasonable and right in itself, whatever opposition to it might be made, for a time, in the smaller States, he had no doubt that "the ties of interest, of kindred, and of common habits, which connect them with the other States, will be too strong to be easily broken. In New Jersey particularly, he was sure a great many would follow the sentiments of Pennsylvania and New York. This country must be united. If persuasion does not unite it, the sword will."

Mr. Gerry and Colonel Mason, both members of the committee, frankly admitted there were material objections to the compromise proposed; but thought it absolutely necessary that some accommodation should take place. "If there were no adjustment," Mr. Gerry said, "a secession would take place; for some gentlemen seemed decided on it. Two different plans will be proposed, and the

result no man could foresee. If we do not come to some agreement among ourselves, some foreign sword will probably do the work for us." Colonel Mason said, "However liable the report might be to objections, he thought it preferable to an appeal to the sword, which had been talked of by some gentlemen. It could not be more inconvenient to any gentleman to remain absent from his private affairs than it was for him; but he would bury his bones in this city, rather than expose his country to the consequences of a dissolution of the convention without any thing being done."

The first clause of the report, prescribing the rule of representation in the popular branch, according to the number of inhabitants in each State of "the description mentioned in the seventh resolution of the committee of the whole," was then taken up; when Mr. Gouverneur Morris, objecting to numbers alone, without reference to property, as the measure of representation, moved to refer the clause to a special committee of five, with the view of fixing precisely the number of representatives for each State in the first instance, and leaving the legislature at liberty to provide for future changes in the relative importance of the States, and for the case of new States. The motion was agreed to by a vote of seven States to three, with one divided; and Mr. Morris, Mr. Gorham, Mr. Randolph, Mr. Rutledge, and Mr. King were appointed to compose the committee.

In the interval of two days, which elapsed be-

fore the committee made their report on the matter referred to them, the convention took up successively for consideration the remaining parts of the proposed compromise, relating to the origination of money bills by the first branch of the legislature, and the equal suffrage of the States in the second branch. Both of these principles were provisionally agreed to, subject to a final vote on the whole scheme, when the question referred to the select committee should have been disposed of.

On the 9th of July, the select committee made their report, recommending that the representative branch, in the first instance, should consist of fifty-six members, which they proceeded to allot specifically among the several States; and they farther recommended, that, as the situation of the States would undergo alterations both in point of wealth and in the number of their inhabitants, the legislature should be *authorized*, from time to time, to augment the number of representatives; and in case any of the existing States should be hereafter divided, or any two or more of them be united, or any new States be created within the limits of the United States, the legislature should also possess authority, in all such cases, to regulate and apportion the number of representatives upon the principles of their wealth and number of inhabitants. In the allotment recommended of the proposed fifty-six members among the States, New Hampshire was to have two, Massachusetts seven, Rhode-Island one,

Connecticut four, New York five, New Jersey three, Pennsylvania eight, Delaware one, Maryland four, Virginia nine, North Carolina five, South Carolina five, and Georgia two.

The allotment of representatives made by this committee among the different States not proving satisfactory, that part of their report was, on motion of Mr. Sherman, committed to a new committee, consisting of one member for each State. The new committee made their report on the following day, recommending that the whole number of representatives, in the first instance, should be sixty-five instead of fifty-six; and, in the allotment of the increased number made by them, New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Virginia, and Georgia were each to gain one, and Maryland two, — leaving the other States as they stood in the allotment recommended by the committee of five.

Of the whole number of representatives under this arrangement, thirty-six fell to the share of the States which, in a general twofold classification, were denominated the Northern, and twenty-nine to the share of the Southern. This difference in the number of representatives was not supposed to depart, in any material degree, from the difference then existing in the actual population of the two sections, computed according to the principles agreed upon by Congress in 1783 as the rule for fiscal apportionment. But the opinion universally entertained at the time was, that the

relative population of the two sections was daily changing, and would continue steadily to change, in favor of the South, in consequence of the advantages of climate, and the large extent of unoccupied, cheap, and fertile land it possessed. It was, therefore, a matter of great interest to the Southern States, as well as of obvious justice and propriety in itself, that a positive and mandatory provision should be inserted in the Constitution for future apportionments of representatives among the States according to some fixed and well-defined rule.

The second part of the report of the committee of five, which had already been adopted by the convention, simply *authorized* the legislature to augment the number of representatives, and to make new apportionments among the States from time to time, as it might think proper. Governor Randolph now moved to amend the report by adding to it a clause "*requiring* the legislature to cause a census and estimate to be taken within one year after its first meeting, in order to ascertain the alterations in the population and wealth of the several States;" which census and estimate should be periodically renewed, and the representation be arranged in conformity to it at each succeeding term. Mr. Williamson, of North Carolina, proposed to substitute, for the periodical census and estimate of "population and wealth" called for by Mr. Randolph's amendment, a census of "the free white inhabitants and three-fifths of

those of other descriptions" as the prescribed constitutional rule for re-apportioning the number of representatives, from time to time, among the States.

The proposition of Mr. Williamson being assented to by Governor Randolph as preferable to his own, it became the subject of a warm and animated discussion. It was opposed, with great earnestness, by Mr. Gouverneur Morris, who objected to numbers as the rule of representative apportionment, especially with reference to the new States which would soon arise in the West, and which, by the rule of numbers, would, he apprehended, acquire a dangerous predominance in the national councils. "If the Western people," he said, "get the power into their hands, they will ruin the Atlantic interests." He objected also to admitting three-fifths of the blacks into the census, and declared that "the people of Pennsylvania would revolt at the idea of being put on a footing with slaves." He, finally, insisted on the propriety of leaving the adjustment of the representation, from time to time, to the discretion of the legislature; and inculcated the maxim, "that the interests of the people ought to be left to the representatives of the people."

Mr. Madison, in reply to Mr. Morris, said "he was not a little surprised to hear this implicit confidence urged by a member who, on all occasions, had inculcated so strongly the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice and

interest. If the representatives of the people would be bound by the ties he had mentioned, what need was there for a Senate? What of a revisionary power? But his reasoning was not only inconsistent with his former reasoning, but with itself. At the same time that he recommended this implicit confidence to the Southern States in the Northern majority, he was still more zealous in exhorting all to a jealousy of a Western majority. To reconcile the gentleman with himself, it must be imagined that he determined the human character by the points of the compass. The truth was, that all men having power ought to be distrusted to a certain extent. With regard to the Western States, he was clear and firm in the opinion that no unfavorable distinctions were admissible, either in point of justice or policy.

"He could not agree that any substantial objection lay against fixing numbers for the perpetual standard of representation. It was said, that representation and taxation were to go together; that taxation and wealth ought to go together; that population and wealth were not measures of each other." He contended, that, however this might be in other countries, surrounded by different circumstances, "in the United States the number of inhabitants was a sufficiently accurate measure of wealth for the object in contemplation. Although their climate varied considerably, yet as the governments, the laws, and the manners of

all were nearly the same, and the intercourse between different parts perfectly free, population, industry, arts, and the value of labor would constantly tend to equalize themselves. The value of labor might be considered the principal criterion of wealth and ability to support taxes; and this would find its level in different places, where the intercourse was free and easy, with as much certainty as the value of money or any other thing.

"Wherever labor would yield most, people would resort, till the competition should destroy the inequality. Hence it is that the people are constantly swarming from the more to the less populous places, — from Europe to America, — from the Northern and middle parts of the United States to the Southern and Western. They go where land is cheaper, because there labor is dearer. If it be true that the same quantity of produce raised on the banks of the Ohio is of less value than on the Delaware, it is also true that the same labor will raise twice or thrice the quantity in the former than in the latter situation."

Mr. King of Massachusetts, who a few days before had used language of great apparent liberality and conciliation towards the Southern States,[1] now united with Mr. Morris, in his objection to including blacks in the ratio of representation. Contrary views were expressed by his colleague Mr. Gorham, as well as by Mr. Sher-

[1] See Madison Debates, vol. II. pp. 1056, 1057, 1058.

man of Connecticut. But, when the question was taken on agreeing to so much of Mr. Williamson's resolution as proposed to comprehend three-fifths of the blacks in the periodical census for regulating the representation, it was rejected by the vote of six States against four.[1]

This decision aroused a feeling of indignant dissatisfaction among the representatives of the Southern States. Mr. Davie, of North Carolina, a member distinguished for the calmness and sobriety of his views, declared on the following day, that "it was high time now to speak out. He saw it was meant by some gentlemen to deprive the Southern States of any share of representation for their blacks. He was sure that North Carolina would never confederate on any terms that did not rate them at least as three-fifths. If the Eastern States meant, therefore, to exclude them altogether, the business was at an end."

The same feeling was expressed, in like emphatic terms, by Governor Randolph, of Virginia, who again brought forward the proposition of Mr.

[1] The number of States present in the convention was now (11th July) reduced to ten by the withdrawal of the two remaining delegates of New York, Messrs. Yates and Lansing, who, notwithstanding the partial concession made to their views in the report of the compromise committee, declined to take any further part in the proceedings of the convention. In their joint letter to the Governor of New York, they said, "We were not present at the completion of the new Constitution; but, before we left the convention, its principles were so well established as to convince us that no alteration was to be expected to conform it to our ideas of expediency or safety. A persuasion, that our further attendance would be fruitless and unavailing, rendered us less solicitous to return." The delegates of New Hampshire had not yet taken their seats.

Williamson, varied only in phraseology, requiring a periodical census to be taken "of all the inhabitants in the manner, and according to the ratio, recommended by Congress in their resolution of the 18th of April, 1783 [rating the blacks at three fifths of their number], and that the legislature of the United States shall arrange the representation accordingly." Mr. Wilson, of Pennsylvania, suggested that less umbrage might perhaps be taken against the admission of slaves into the rule of representation, if they were made primarily an ingredient in the rule of taxation, and if it should be declared that representation ought to be apportioned by the same rule as taxation. The proposition of Governor Randolph, modified according to the suggestion of Mr. Wilson, was then put to the vote; and, notwithstanding the adverse decision of the day before, it was now carried by the votes of Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, and Georgia,—New Jersey and Delaware voting against it, and Massachusetts and South Carolina divided.

The adoption of Mr. Randolph's proposition, which made numbers alone the rule of both representation and taxation, rendered it necessary to reconsider so much of the latter part of the report of the committee of five, which had been adopted, as required representation to be adjusted with reference to wealth as well as numbers. A motion was, therefore, made by Mr. Randolph to reconsider that part of the report, and to strike out

"wealth." This motion gave rise to a discussion, which, from the vivid light it throws on the sectional jealousies that, from the foundation of the government, influenced more or less openly the conduct of political parties, claims a brief historical notice.

The motion was warmly opposed by Mr. Gouverneur Morris. He said, "the train of business, and the late turn which it had taken, had led him into deep meditation on it; and he would candidly state the result. A distinction had been set up, and urged between the Northern and Southern States. He had hitherto considered this doctrine heretical. He still thought the distinction groundless. He sees, however, that it is persisted in; and the Southern gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public councils. The consequence of such a transfer of power, from the maritime to the interior and landed interest, will, he foresees, be such an oppression to commerce, that he shall be obliged to vote for *the vicious principle of equality in the second branch, in order to provide some defence for the Northern States against it.*

"In this struggle between the two ends of the Union, what part ought the Middle States, in point of policy, to take? To join their Eastern brethren, according to his ideas. If the Southern States get the power into their hands, and be joined, as they will be, with the interior country, they will inevit-

ably bring on a war for the Mississippi. This language is already held. The interior country, having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the Northern and Middle States will have against this danger. It has been said, that North Carolina, South Carolina, and Georgia only, will, in a little time, have a majority of the people of America. They must, in that case, include the great interior country; and every thing was to be apprehended from their getting the power into their hands."

The reply of Mr. Wilson, in the just, wise, and catholic spirit which distinguished it, presented a striking contrast to the discourse of his colleague. "If the interior country," he said, "should acquire this majority, it will not only have the right, but will avail itself of it, whether we will or no. This jealousy misled the policy of Great Britain with regard to America. The fatal maxims espoused by her were, that the colonies were growing too fast, and that their growth must be stinted in time. What were the consequences? First, enmity on our part; then, final separation. Like consequences will result on the part of the interior settlements, if like jealousy and policy be pursued on ours.

"Again, he could not agree that property was the sole or primary object of government and society. The cultivation and improvement of the human mind was the most noble object. With respect to this object, as well as to other personal

rights, numbers were surely the natural and precise measure of representation; and, with respect to property, they could not vary much from the precise measure. In no point of view, however, could the establishment of numbers, as the rule of representation in the first branch, vary his opinion as to the impropriety of letting a vicious principle into the second branch."

On putting the question, the verbal change proposed by Governor Randolph, in the report of the committee of five, was made; and the word "wealth" stricken out by a nearly unanimous vote.[1]

[1] The narrow jealousy inculcated by Mr. Morris, on this and other occasions, with regard to the future new States of the West, was strongly manifested by the Eastern States, and especially by Massachusetts. On the day following the discussion, of which an outline is given above, Mr. Gerry, of Massachusetts, seconded by his colleague, Mr. King, offered a formal proposition to limit the future representation of the new States, so that the aggregate number of their representatives, whatever the amount of their population, should *never* exceed that of the representatives of the old States. He said in the jealous spirit, and almost in the words, of Mr. Morris: —

"If they [the Western States] acquire power, they will, like all men, abuse it. They will oppress commerce, and drain our wealth into the Western country." — Madison Debates, vol. II. p. 1095. Mr. King and Mr. Gorham had already expressed similar sentiments. Idem, pp. 1037, 1038, and 1053.

The citations in the text show how promptly Mr. Madison repelled the idea of any unfavorable discriminations against the new States of the West, as "inadmissible alike in point of justice and policy." Colonel Mason also declared emphatically: "They must be treated as equals, and subjected to no degrading discriminations. They will have the same pride and other passions which we have; and will either not unite with, or speedily revolt from, the Union, if they are not, in all respects, placed on an equal footing with their brethren." Mad. Deb. vol. II. pp. 1065, 1066.

Whether, in the actual operations of the government, the "landed interests of the interior," of which Mr. Morris and his friends proclaimed so great a jealousy, have evinced the greater disposition to *oppress commerce*, or the commercial and manufacturing interests of the

The subject of representation in the first branch of the legislature being now disposed of, the question recurred on the adoption of the whole of the compromise report, when the contest was renewed on the equality of suffrage in the second branch, with an animation and vehemence, which showed that the smouldering ashes of the former controversy yet retained no small portion of latent fire. Mr. Wilson traced the progress of the report through its several stages, and remarked that — "when, on the question concerning an equality of votes, the convention was divided — our constituents, had they voted as their representatives did, would have stood as two-thirds against the equality, and one-third only in favor of it. This fact would ere long be known; and it would appear that this fundamental point has been carried by one-third against two-thirds. What hopes will our constituents entertain when they find that the essential principles of justice have been violated in the outset of the government?"

Mr. Luther Martin denied that there were two-thirds against the equality of votes. "The States that please to call themselves large," he said, "were the weakest in the Union. Look at Massachusetts, — look at Virginia: are they efficient States? He was for letting a separation take

Northern and Eastern "maritime" States to *oppress agriculture*, it will be the province of faithful history to decide. The proposition of Mr. Gerry was rejected by the following vote: Massachusetts, Connecticut, Delaware, Maryland, ay, — 4; New Jersey, Virginia, North Carolina, South Carolina, Georgia, no, — 5; Pennsylvania, divided.

place, if they desired it. He had rather there should be two confederacies, than one founded on any other principle than an equality of votes in the second branch, at least."

The reconsideration of the report, in relation to the equality of votes in the second branch of the legislature, being tacitly agreed to, Mr. Charles Pinckney, of South Carolina, moved that, instead of an equality of votes, the States should be represented in the second branch according to a graduated scale, which, though not corresponding strictly to their respective numbers of inhabitants, would yet not lose sight of their relative importance in a general view. He proposed that the whole number of members of the second branch should be thirty-six, of which New Hampshire should have two, Massachusetts four, Rhode Island one, Connecticut three, New York three, New Jersey two, Pennsylvania four, Delaware one, Maryland three, Virginia five, North Carolina three, South Carolina three, and Georgia two.[1]

Mr. Wilson seconded the motion of Mr. Pinckney; and Mr. Madison expressed his concurrence in it as a reasonable compromise.

Mr. Dayton, of New Jersey, declared that "the smaller States can never give up their equality. For himself, he would, in no event, yield that security for their rights."

[1] By Mr. Pinckney's proposition, the Northern States would have had a majority of four in a body of thirty-six, instead of a majority of six in a body of twenty-six, — which was the result of an equality of representation in the second branch.

Mr. Sherman urged the equality of votes, "not so much," he said, "as a security for the small States as for the *state governments*, which could not be preserved unless they were represented, and had a negative in the general government."

Mr. Gerry, Mr. King, and Mr. Strong, all delegates of Massachusetts, expressed their respective views on the subject,—Mr. King declaring an inflexible opposition to the equality of votes, and that "he would prefer doing nothing to an allowance of it;" while his two colleagues signified their acquiescence in it as a measure of compromise.

Mr. Madison then entered more fully into the question; and expressed "his apprehensions, that, if the proper foundation of government was destroyed by substituting an equality in place of a proportional representation, no proper superstructure could be raised. If the small States really wish for a government, armed with the powers necessary to secure their liberties, and to enforce obedience on the larger members as well as themselves, he could not help thinking them extremely mistaken in the means.

"He observed that the people of the large States would, in some way or other, secure to themselves a weight proportioned to the importance accruing from their superior numbers. If they could not effect it by a proportional representation in the government, they would probably accede to no government which did not, in a great measure, depend for its efficacy on their voluntary co-operation; in

which case, they would indirectly secure their object. The existing Confederacy proved, that, where the acts of the general government were to be executed by the particular governments, the latter had a weight in proportion to their importance. No one would say, that, either in Congress or out of Congress, Delaware had equal weight with Pennsylvania. If the latter was to supply ten times as much money as the former, and no compulsion could be used, it was of ten times more importance that she should voluntarily furnish the supply. In the Dutch Confederacy, the votes of the provinces were equal. But Holland, which supplies about half the money, governed the whole republic.

"He enumerated the objections against an equality of votes in the second branch, notwithstanding the proportional representation in the first: 1. The minority could negative the will of the majority of the people. 2. They would extort measures by making them a condition of their assent to other necessary measures. 3. They could obtrude measures on the majority by virtue of the peculiar powers which would be vested in the Senate. 4. The evil, instead of being cured by time, would increase with every new State that should be admitted, as they must all be admitted on the principle of equality. 5. The perpetuity it would give to the preponderance of the Northern against the Southern scale was a serious consideration. There were five States on the Southern, eight on the

Northern side of the line. Should a proportional representation take place, it was true the Northern would still outnumber the other; but not in the same degree at this time, and every day would tend towards an equilibrium."

The discussion was continued, and closed by Mr. Wilson, who said "he would add a few words only. If equality in the second branch was an error that time would correct, he should be less anxious to exclude it, being sensible that perfection was unattainable in any plan; but, being a fundamental and perpetual error, it ought by all means to be avoided. A vice in the representation, like an error in the first concoction, must be followed by disease, convulsions, and finally death itself. The justice of the general principle of proportional representation has not, in argument at least, been yet controverted.

"But it is said, a departure from it, so far as to give the States an equal vote in one branch of the legislature, is essential to their preservation. He had considered this position maturely, but could not see its application. That the States ought to be preserved, he admitted. But does it follow that an equality of votes is necessary for the purpose? Is there any reason to suppose, that, if their preservation should depend more on the large than on the small States, the security of the States against the general government would be diminished? Are the large States less attached to their existence — more likely to commit suicide — than the small?

"He was anxious for uniting all the States under one government. He knew there were some respectable men who preferred three confederacies, united by offensive and defensive alliances. Many things may be plausibly said — some may be justly said — in favor of such a project. He could not, however, concur in it himself; but he thought nothing so pernicious as bad principles."

The proposition of Mr. Pinckney being rejected by a vote of six States to four, the question was put on agreeing to the whole of the compromise report as amended, including the equality of representation in the senatorial branch. Of the ten States present in the convention, five — Connecticut, New Jersey, Delaware, Maryland, and North Carolina — voted for it; four — Pennsylvania, Virginia, South Carolina, and Georgia — voted against it; and Massachusetts was divided. Had Massachusetts voted, as she had hitherto done, with the States opposed to equality of suffrage in the second branch, the report would have been lost.

It is not easy to account for the neutralization of a State which had been so thorough and decided in her opposition to this principle as Massachusetts. It seems not improbable that a portion of her delegation was brought to think with Mr. Morris,[1] that the principle, though not just in itself, was entitled to favor from them as redounding to the benefit of the Northern, in the sectional competition with the Southern States. It would

[1] See ante, p. 399.

not be doing honor to the sagacity of the leading advocates of the principle in the convention to ascribe its incorporation into the Constitution solely to the reason most prominently alleged in its support, — that it was deemed a necessary safeguard for the reserved sovereignty of the States against encroachments from the general government. For nothing is more incontrovertible than what Mr. Madison, in a calm review of the constitutional history of the country near the close of his life, deliberately asserted, "that, as soon as the smaller States had secured more than a proportional representation in the proposed government, they became favorable to augmentations of its powers; and that, under the administration of the government, they have generally, in contests between it and the State governments, leaned to the former."[1]

When the vote of the convention, sanctioning the compromise report, was announced, Governor Randolph moved an adjournment, in order "that the larger States might consider the steps to be taken in the solemn crisis of the business, and that the small States might also deliberate on the means of conciliation." The motion, resisted at first, was at length agreed to; and Mr. Madison, in his contemporary record of the proceedings of the convention, informs us that a meeting took place of a considerable number of the deputies of the larger States, for the purpose of consulting

[1] See letter, dated March, 1826, in M'Guire's Selection, pp. 415, 416.

on the course to be pursued by them in consequence of the decision of the convention.

There were not wanting among them, he tells us, those who, believing that no good government could be built on the foundation advocated by the smaller States, would have preferred that a distinct scheme should go forth to the country from the side representing the principal States and a majority of the people of America, even at the risk of an open schism in the convention and a separate recommendation, by each party, of its own plan. But as others were inclined to yield to the smaller States, and to concur in an act which, however imperfect and exceptionable, had been agreed on by the convention as a body, though carried by a bare majority of States representing a minority of the people of the United States, there was no concert of views in the meeting; and the result was a final acquiescence in what had been done in the convention. Henceforward, therefore, a proportional representation of the States in one branch of the legislature, and equality of representation in the other, was considered as the agreed basis of the proposed government. And as the equality of votes in the second branch would operate as an additional and complex check on legislation, in a government in which securities against the abusive exercise of the power of a majority were of more importance, in the ordinary course of things, than facilities for the prompt and efficient exertion of that

power, the settlement came to be accepted with frankness and cordiality, as a compromise, by those who had firmly opposed it on principle, while it was in the process of discussion.[1]

The convention, having at last untied the Gordian knot presented by the seventh and eighth resolutions of the committee of the whole, now resumed the consideration of the sixth resolution, defining the general character of the powers to be vested in the legislature of the Union, which had been in the mean time postponed. The negative upon laws of the States, contravening the articles of the Union or treaties made under the authority of the Union, which it was proposed by the sixth resolution to vest in the general legislature, was now superseded by a declaratory provision recognizing the right, and at the same time making it the duty, of the judiciary to treat all

[1] Mr. Madison, in the 62d No. of the "Federalist," written a few months after the time referred to in the text, used the following language with regard to this compromise: —

"Another advantage accruing from this ingredient in the constitution of the Senate is the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then of a majority of the States. It must be acknowledged that this complicated check on legislation may, in some instances, be injurious as well as beneficial; and that the peculiar defence it involves in favor of the smaller States would be more rational, if any interests, common to them and distinct from those of the other States, would otherwise be exposed to peculiar danger. But as the larger States will always be able, by their power over the supplies, to defeat unreasonable exertions of this prerogative of the lesser; and as the facility and excess of law-making seems to be the disease to which our governments are most liable, — it is not impossible that this part of the Constitution may be more convenient in practice than it appears to many in contemplation."

such laws as null and void. The Constitution and laws of the United States made in pursuance of it, and all treaties made under the authority of the United States, were declared to be the *supreme law* of the land, and, as such, the binding rule of judicial decision, "any thing in the constitution or laws of any State to the contrary notwithstanding." This fundamental provision supplied the requisite defence to the legitimate authority of the general government against encroachments from the States, and finally satisfied the views of those who, for the want of some such acknowledged control, had been led, at first, to suggest the expedient of a congressional negative.[1]

The convention then proceeded to the consideration of the ninth resolution of the committee of the whole relating to the constitution of the executive department, and which was soon found to present difficulties not easier of solution, though of a different character, than those which had so long detained the convention with the question of representation. The organization of the executive magistracy in a republic of large extent, on such principles as to render it at the same time efficient for administration and safe to the public liberty and morals, is one of those problems that has hitherto most severely tried the wisdom, if it has not proved the despair, of political lawgivers.

[1] See ante, chap. XVIII. pp. 206–215; also Madison Debates, vol. II. p. 715; and letters of Mr. Madison, to Mr. Trist, December, 1831, — Mr. Tyler, 1833, — and William C. Rives, October, 1833.

The delegation of Virginia, in the general outline of a plan of government which they laid before the convention, and which, in this respect, was followed without change by the committee of the whole, proposed that the executive magistrate of the Confederacy be appointed by the national legislature for a limited period, and that he be ineligible a second time. In this first sketch they probably meant nothing more than to throw out for consideration and future amendment, — it being necessary that some definite plan should be before the convention, — an obvious mode of appointment, rendered the more familiar to them by the practice of their own State, where the duties confided to the executive department, however, were of an exceedingly simple and uninfluential character.

When the subject came before the committee of the whole, the appointment of the executive by the national legislature was strongly objected to, by one or two distinguished members, as inconsistent with that mutual independence of the departments which was considered a fundamental principle of good government, and as having also a dangerous tendency to beget intrigues and corrupt bargaining in the election. Two other modes of election were suggested, — one by electors chosen by the people, the other by the executives of the States;[1] but, neither of these proving accept-

[1] Of these two modes of election, the first was proposed by Mr. Wilson, the second by Mr. Gerry. — See Madison Debates, vol. II. pp. 768, 769, and 828, 829.

able, the appointment by the national legislature received the sanction of a large majority of the States in committee of the whole, with the express condition, however, of "ineligibility a second time," as necessary to guard the executive from undue dependence on the legislature.

The proceedings of the committee of the whole being now before the convention for revision, Mr. Gouverneur Morris moved to amend the resolution of the committee by striking out, "national legislature," and inserting, "citizens of the United States," so as to refer the election of the executive directly to the people. It deserves to be remembered in this connection, that Colonel George Mason,— the member of the convention distinguished above all others, perhaps, for his thorough republican sentiments,— in opposing the proposition used this remarkable language: —

"He conceived it would be as unnatural to refer the choice of a proper character for chief magistrate to the people, as it would to refer a trial of colors to a blind man. The extent of the country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the candidates."[1]

When the proposition of Mr. Morris was put

[1] He renewed the expression of his opinions on this subject in the convention, eight or ten days later, in terms in which there was no abatement of emphatic earnestness.

"It has been proposed," he said, "that the election should be made by the people at large; that is, that an act, which ought to be performed by those who know most of eminent characters and qualifications, should be performed by those who know least. . . . A popular election in any form, as Mr. Gerry

to the vote, it received the support of but one State, Pennsylvania; all the other nine States present recording their votes against it. Mr. Luther Martin then proposed, that, instead of an appointment by the national legislature, the executive be chosen by electors appointed by the State legislatures. This proposition being rejected by a vote of eight States to two, the question recurred on the appointment by the national legislature, as proposed in the resolutions of the committee of the whole; and it passed unanimously in the affirmative. After this, a motion was made to strike out the clause declaring "the ineligibility of the executive magistrate a second time,"—a disqualification which had been hitherto considered inseparably incident to an appointment by the legislature; and, to the great surprise of a number of the members, the motion was carried by a vote of six States to four.

In this state of things,—the executive magistrate to be chosen by the national legislature and rendered re-eligible indefinitely,—it was evident he would be placed under the strongest possible temptations to court the support of the legislative body by improper compliances, as well as by the seductive use of his patronage among its members. To guard against these evils, so obviously springing

has observed, would throw the appointment into the hands of the Cincinnati,—a society for the members of which he had a great respect, but which he never wished to have a preponderating influence in the government."

For the sentiments of Mr. Gerry, and also of Mr. Pinckney, of South Carolina, see post, p. 418.

from the vote just given for striking out the clause of ineligibility, one of the delegates of Virginia, Dr. M'Clurg, presented the tenure of "good behavior" as the only alternative left to the convention for maintaining the independence and integrity of the executive. In introducing his motion to that effect, he said, that, "by striking out the words declaring the executive magistrate not re-eligible, that officer was put in a situation which would keep him for ever dependent on the legislature; and he conceived the independence of the executive [with regard to the legislature] to be equally essential with that of the judiciary." And, in closing the discussion, in order to exclude all possibility of misinterpretation of the spirit and intention of his motion, he repeated the declaration of his object in these clear and unequivocal terms: —

"It was an essential object with him to make the executive independent of the legislature; and the only mode left for effecting it, after the vote destroying his ineligibility a second time, was to appoint him for good behavior."

It was, undoubtedly, with this understanding of Dr. M'Clurg's motion, to substitute the tenure of "good behavior" for a renewable periodical term, — not as in itself proper or desirable, but as a choice of evils for those who deprecated an indefinite re-eligibility of the executive magistrate in conjunction with an appointment by the legislature, — that it received the votes of four States,

New Jersey, Pennsylvania, Delaware, and Virginia; none of whose representatives, with the exception of Mr. Gouverneur Morris of Pennsylvania, Mr. Read of Delaware, and perhaps one of the colleagues of the latter, Mr. Broome, had ever shown the slightest leaning in favor of such a tenure upon its own merits. The object of the motion, as Mr. Madison has recorded, was plainly "to enforce the argument against the re-eligibility of the executive magistrate, by holding out a tenure during good behavior, as the alternative of ineligibility for keeping him independent of the legislature."[1]

In that view, it was forcibly presented, at the time, in the remarks with which Mr. Madison himself came to the aid of his colleague in the discussion that took place on the occasion.

"If it be essential," said he, "to the preservation of liberty that the legislative, executive, and judiciary powers be separate, it is essential to the maintenance of the separation that they should be independent of each other. The executive could not be independent of the legislature, if dependent on the pleasure of that branch for re-appointment. Why was it determined that the judges should not hold their places by such a tenure? Because they might be tempted to cultivate the legislature by an undue complaisance, and thus render the legislature the virtual expositor as well as maker of the laws. In like manner, a dependence of the execu-

[1] See Madison Debates, vol. II. p. 1125, note there.

tive on the legislature would render the latter the executor as well as maker of laws; and then, according to the observation of Montesquieu, tyrannical laws may be made that they may be executed in a tyrannical manner."

He proceeded to show that it might be even more dangerous to liberty to suffer a union between the executive and legislative powers, than to admit it between the judiciary and the legislative. "He conceived it," he said, "to be absolutely necessary to a well-constituted Republic that the two first should be kept distinct and independent of each other. Whether the plan proposed by the motion was a proper one was another question, as it depended on the practicability of instituting a tribunal for impeachment as certain and adequate in the one case as in the other. On the other hand, respect for the mover entitled his proposition to a fair hearing and discussion, until a less objectionable expedient should be applied for guarding against a dangerous union of the legislative and executive departments."

Two days later, in sustaining a motion to reinstate the clause of ineligibility, Mr. Madison repeated, with great force: —

"It is essential, then, that the department of the executive should be drawn from some source, or held by some tenure, that will give him a free agency with regard to the legislature. This could not be, if he was to be appointable, *from time to time*, by the legislature."

The motion of Dr. M'Clurg, and the support it received, though short of a majority of the States, had the effect which was desired: for, immediately after the division upon it, it was unanimously agreed by the convention to reconsider the vote by which the clause of ineligibility had been stricken out; and that clause, as we shall see, was subsequently re-instated.[1]

[1] In an extraordinary letter of Colonel Hamilton to Mr. Timothy Pickering, dated 16th September, 1803, — a letter evidently drawn from him for political uses, — upon no other foundation than the isolated vote in convention on Dr. M'Clurg's proposition (a vote inaccurately stated by him as of five instead of four States), he hazarded the assertion that Mr. Madison and a majority of the Virginia delegation were, equally with himself, in favor of an executive during good behavior. How entirely unsupported this inference is by the actual circumstances of the case, as we have recited them in the text and as they are verified by the journal of the convention, every candid reader will at once perceive. Of the attendant circumstances, Colonel Hamilton himself must be presumed to have been ignorant, as he was absent at the time from the convention, and had been, and continued to be so, for several weeks, before and after. The same indulgence cannot be extended to his biographer, who, in the full blaze of light since shed on the subject by the publication of the journal of the convention and other contemporaneous documents, still persists in the same misconstruction.

But what is to be expected from a spirit of obloquy, so violent and so blinded by its own venom, as to charge upon Mr. Madison the felonious offence of "crossing out" or cancelling a portion of the journal of the convention for the purpose of destroying the evidence of a proposition incorrectly alleged to have been made by Colonel Hamilton, and to found the charge upon the most apparent misconstruction of a passage cited from Mr. Jefferson?

In the autobiography of Mr. Jefferson, in justifying his opposition to the re-eligibility of the President as allowed by the Constitution, he says, "Three States expressed their disapprobation of it, — New York, by recommending an amendment that the President should not be eligible a third time; and Virginia and North Carolina, that he should not be capable of serving more than eight in any term of sixteen years." Mr. Jefferson here obviously alludes to amendments of the Constitution respectively recommended by the *separate conven-*

The reconsideration of the vote on the question of ineligibility re-opened the whole subject of the executive organization, in all its bearings, to a wide and able discussion, which occupied the convention for an entire week. The mode of appointment was the branch of the subject which first elicited the opinions of members. Mr. Gouverneur Morris renewed his argument, with great zeal, in favor of an election by a direct vote of the people. He

tions of the three States named, at the time of their several ratifications of the instrument, — recommendations which a reference to the proceedings of those *State* conventions shows, were actually made by them in the terms mentioned by Mr. Jefferson. This passage, so plain and unambiguous that it seems impossible to misunderstand it, is read by the author of the "History of the American Republic," &c., to mean that New York proposed the amendment in the *Federal* Convention; and then he argues, that Colonel Hamilton, being the only representative of New York present in the Federal Convention at the time, was the person who proposed the amendment — (though it is well known he wrote an able and elaborate paper in the "Federalist," No. 72, against the principle of it); and, there being no trace of the supposititious proposition in the journal of the convention when it came to be published, the writer then bounds to the conclusion that it was *cancelled* by Mr. Madison, while he had custody of the journal as secretary of State! And this is called *history*, thrice blindly, but deliberately, repeated in the work referred to. — See History of American Republic, &c., vol. III. pp. 345–348; idem, in Appendix; and vol. IV. pp. 462–466.

It gives us no pleasure to comment on inaccuracies of recollection into which Colonel Hamilton sometimes fell with regard to his own political opinions and conduct, as well as those of his contemporaries. We forbear, therefore, to notice some errors of this sort contained in his letter to Mr. Pickering, farther than to state that the plan of a constitution which he mentions as having communicated to Mr. Madison, about the close of the convention, when produced from his own papers as well as those of Mr. Madison, shows he was wholly mistaken in alleging that it changed the tenure of the executive office from good behavior, as first proposed by him, to a brief and definite duration. On the contrary, the tenure in both plans is the same, and during good behavior. — See Hamilton's Works, vol. II. p. 401; and Madison Debates, vol. III. App. XVI.–XXVIII.

was in favor of a strong and vigorous executive; and that, he thought, could be founded only on the favor and confidence of the mass of the people. "The executive," he said, "ought to be so constituted as to be the great protector of the mass of the people. If he is to be the guardian of the people, let him be appointed by the people."

A popular election of the executive magistrate was warmly opposed by Mr. Charles Pinckney and Mr. Gerry. In addition to the strong objections that had been urged against it by Colonel Mason, founded on the want of information in the people at large of the characters and proper qualifications of the candidates, Mr. Pinckney pressed the consideration that they would be led and controlled in their choice by artful political managers, — ".a few active and designing men." Mr. Gerry said, "A popular election, in this case, is radically vicious. The ignorance of the people would put it in the power of some one set of men, dispersed through the Union and acting in concert, to delude them into any appointment."

Mr. Madison thought, that, of all the modes of election which had been suggested, the most insuperable objections lay against an appointment by the national legislature. "Besides the general influence of that mode on the independence of the executive, the election of the chief magistrate," he said, "would, in the first instance, agitate and divide the legislature so much that the public interest would materially suffer by it. Public

bodies are always apt to be thrown into contentions, but into more violent ones by such occasions than by any others. In the second place, the candidate would intrigue with the legislature, would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views. In the third place, the ministers of foreign powers would have, and would make use of, the opportunities to mix their intrigues and influence with the election."

He then passed in review the other modes of election that had been suggested, particularly an appointment by the State legislatures or the State executives; to either of which, he thought, there were decisive objections in the predominance of partial and local objects that would be likely to control their choice. He concluded that "the option lay between an appointment by electors chosen by the people, or an immediate appointment by the people. He thought the former mode free from many of the objections which had been urged against it, and preferable to an appointment by the national legislature. As the electors would be chosen for the occasion, would meet at once, and proceed immediately to an appointment, there would be very little opportunity for cabal or corruption." Looking at the subject in all the various aspects of which it was susceptible, he gave his preference to an appointment by electors chosen by the people, "as, upon the whole, liable to the fewest objections." [1]

[1] See Madison Debates, vol. II. pp. 1148 and 1200, 1201.

Mr. Wilson was the steady champion of this mode of election, which he had formerly proposed, as we have seen, in the committee of the whole, but which, then receiving the votes of only two States, he did not deem it respectful to the convention now to bring forward again. In this difficult and most important question, he and Mr. Madison stood side by side, as they had done in so many other struggles of the convention, — united by common principles and views, and sustaining each other with a fraternal spirit and kindred ability.

Amid the great diversity of opinions prevailing in the convention, Mr. Ellsworth, at length, brought forward a proposition to strike out the appointment by the national legislature, and to substitute in the place of it an appointment by electors to be chosen by the legislatures of the several States, in proportions corresponding to their respective numbers. This proposition conciliated, for the moment, the views of those who were opposed alike to an election by the national legislature and by the people; and, on the 19th of July, it was carried by the vote of eight States to two, — Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, and Georgia voting for it; and Virginia and South Carolina, against it. The decision, however, was destined to a very brief duration. On the 23d of July, it was agreed to reconsider it; and, on the following day, a motion to restore the election by the national legislature was carried by the vote of seven States to four, — the whole num-

ber of States then present in the convention having been increased to eleven by the arrival of delegates from New Hampshire. The four States voting in the negative were Connecticut, Pennsylvania, Maryland, and Virginia.

Immediately after the vote re-establishing the appointment by the national legislature, propositions were made to extend the duration of the executive office — reduced by a previous vote of the convention from seven to six years — to periods of eleven, fifteen, and even twenty years. The clause of ineligibility a second time had not yet been re-instated; and these propositions to prolong the term of office were made in order to lessen, as much as possible, the evil of dependence on the legislature for re-election. Mr. Wilson remarked, "The difficulties and perplexities into which the House is thrown proceed from the election by the legislature, which he was very sorry had been re-instated. The inconvenience of this mode was such that he would agree to almost any length of time in order to get rid of the dependence which must result from it."

He finally proposed, as another means of arriving at the same end, that the executive be elected by a small number, not exceeding fifteen, of the national legislature, who should be constituted electors, to be drawn from the body by *lot*, and who should retire immediately and make the election before separating. "By this mode," he said, "intrigue would be avoided in the first instance, and

the dependence be diminished." As the idea, however, was a new one, and had not been thoroughly digested even by himself, he would not press its consideration. Mr. Gerry and Mr. King thought it would be committing too much to chance. Mr. Gouverneur Morris said, "it would be better that chance should decide than intrigue." It does not appear that the convention pronounced any vote on the proposition.[1]

None of the various plans which had been proposed as substitutes for an election of the executive by the national legislature proving satisfactory, and the convention having returned to their first choice for the want of a better, without, however, being at all a convert to its merits, Colonel Mason, who probably thought more favorably of it than any other member of the convention, now moved to re-instate, along with the mode of election, the clause of ineligibility and the term of seven years. This motion was carried by a vote of seven States in the affirmative, of which Virginia was one,

[1] Rousseau, whose political writings had attracted the general attention of Europe, being applied to in 1772 by the authorities of Poland for his counsel and assistance in the reform of their political institutions, recommended the employment of *lot*, to designate one out of a select body of men previously chosen by the nation, as the best means of mitigating the dangers and inconveniences, without violating the principle, of a national election of their sovereign. "Le sort même dans cette forme," he said, "est l'instrument d'une élection éclairée et volontaire." — See Considérations sur le Gouvernement de Pologne, chap. XIV. — A very ingenious and well-considered plan for the election of a constitutional President, founded on the same idea, but different in its details, was, some years ago, promulgated by an enlightened American citizen, — Judge Samuel Nicholas, of Kentucky.

to three in the negative. But on the question to agree to the whole resolution, as it then stood, there were but six States in the affirmative, — Pennsylvania, Delaware, and Maryland voting in the negative; Massachusetts, not present; and Virginia, divided. Of the Virginia delegation, General Washington and Mr. Madison voted against the resolution from a decided repugnance to the election of the executive magistrate by the national legislature; Colonel Mason and Judge Blair voted for it; and Governor Randolph and Dr. M'Clurg were absent at the time of taking the vote.

The resolution of the committee of the whole, relating to the organization of the executive department, being thus disposed of, the convention took up in succession the remaining ten resolutions reported by the committee, and adopted each of them with little or no alteration, excepting only the fifteenth, providing for the continuance of the existing Congress until the inauguration of the new government, which was pretermitted more from objections of form than of principle. Some of these resolutions gave rise to interesting and able discussions in the convention; but they all received, in the end, the sanction of a large majority of the States, where they did not meet, as some of them did, with their unanimous concurrence. The nineteen resolutions, forming the Virginia plan, as modified and reported by the committee of the whole, had now, with the farther modifications and additions they received in the convention, become

twenty-two, which were referred, by an order of the House, to a committee of five members to prepare and report the draught of a constitution *in conformity to them.* This committee, called the committee of detail, was elected by ballot, and consisted of Mr. Rutledge, of South Carolina; Mr. Randolph, of Virginia; Mr. Gorham, of Massachusetts; Mr. Ellsworth, of Connecticut; and Mr. Wilson, of Pennsylvania. In order to afford time to the committee to perform their work, the convention adjourned on the 26th of July, to meet again on the 6th of August.

CHAPTER XXXII.

Constitution reported by Committee of Detail — Proceedings on it in Convention — Right of Suffrage in Election of Representatives — Principles of Convention opposed to Universal Suffrage — Cautious Policy of Convention with regard to Admission of Foreigners to Political Privileges — Warm Debate on Clause restraining Origination of Money Bills to House of Representatives — Single Instance of Separation, in their Votes, between General Washington and Mr. Madison — Contest respecting Ineligibility of Members of Congress to other Offices — Enumeration of Powers of Congress — History of Bargain, entered into between the Eastern States and two of the Southern States, respecting Slave Trade, and Regulation of Commerce — Strong Dissatisfaction and Disgust of several Members of the Convention, particularly Colonel Mason — Mr. Madison's Views of the True Balance of Interests among the Different States, with regard to Future Commercial Policy of the Government — Separate Powers of Senate — Difficulties in Organization of Executive Department cause it to be postponed to last Days of Convention — Complete Unanimity with regard to Independence of Judiciary — New Plan brought forward by a Committee respecting Mode of Appointment and Official Tenure of Executive — Action of Convention upon it — Proposition of Colonel Mason, for Council of State to President, sustained by Mr. Madison, Dr. Franklin, Mr. Wilson, and Mr. Dickinson — Committee of Five appointed to revise Style and Arrangement of Articles in Constitution — Question on Adoption of Constitution as a Whole — Declarations of Governor Randolph, Colonel Mason, Mr. Pinckney, and Mr. Gerry — Proposition for signing Constitution moved by Dr. Franklin — His Impressive Remarks on the Occasion — General Washington, from the Chair, before putting the Question, asks leave to submit a Proposition, which is unanimously adopted — Appeal of Dr. Franklin

for like Unanimity in the Signature of the Constitution enforced by several Members — Three only withhold their Signatures — Closing Scene of the Convention.

On the 6th of August, the convention re-assembled to receive the report of the committee of detail charged with preparing the draught of a constitution, in conformity to the resolutions which had been adopted by the convention. The draught was arranged into twenty-three articles, delineating minutely the organization, powers, and functions of the several departments of the government, with a few supplemental provisions relative to the mode of putting it into operation. It might not unnaturally be supposed, that, the general principles of the system having already received the sanction of the convention, and being now clothed in an appropriate technical form for giving them practical effect, the chief difficulties of the important task committed to the hands of the convention had been surmounted. These difficulties, however, thickened, and grew more and more lowering in their aspect, as the convention advanced towards the close of their labors, and, more than once, seemed to put in jeopardy the final success of their deliberations.

The day after receiving the report of the committee, the convention entered upon the consideration of the constitution reported. The three first articles presented no question of special importance, and, with a slight modification of one of them, were promptly agreed to.

The fourth article related to the constitution of the popular branch of the legislative department, and presented, in the outset, questions of very deep interest. The first section of that article provided that "the members of the House of Representatives shall be chosen by the people of the several States and that the *qualifications* of the electors shall be the same as those of the electors in the several States of the most numerous branch of their own legislatures." Mr. Gouverneur Morris moved to strike out the latter portion of the section, in order that some provision might be substituted which would restrain the right of suffrage to freeholders. It was considered, however, an exceedingly delicate thing to interfere with the right of suffrage as regulated by the respective States; and Mr. Morris's motion was not acceded to. The regulations which then existed in the several States on the subject of suffrage were of a very conservative character, and left but little, if any, room for men of the most sober opinions to desire a change, even if an interference of the Federal authority had been considered admissible in principle. In a very large majority of the States, the possession of a moderate freehold estate, or its equivalent in personal property, was required as a qualification for the exercise of the right of suffrage; and in not one of them, it is believed, was universal suffrage, as since practised, then known.[1]

[1] The following were the qualifications prescribed in the principal States of the Union, for the exercise of the right of suffrage, at the

The wise men who framed the Constitution of the United States, believed, therefore, that they might safely leave the subject where the peculiar delicacy of the relations between the State and Federal authorities, with regard to it, seemed to require that it should be left, — in the hands of the States. At the same time, in doing so, they distinctly recognized the necessity of "qualifications" for the performance of this primordial function of

time of the formation of the constitution of the United States: In Massachusetts, a freehold estate of the annual income of three pounds, or other estate of the value of sixty pounds; in Connecticut, a freehold of forty shillings yearly value, or personal estate of forty pounds value; in New York, a freehold of twenty pounds value, or leasehold of forty shillings yearly value, and payment of taxes, to vote for members of the Assembly, and a freehold of the value of one hundred pounds, over and above all debts charged upon it, to vote for members of the Senate; in New Jersey, clear estate of fifty pounds value; in Pennsylvania, payment of "public taxes" for the preceding year; in Maryland, freehold of fifty acres of land, or other property above the value of thirty pounds; in Virginia, freehold in twenty-five acres of improved, or one hundred acres of unimproved, land; in North Carolina, a freehold estate in fifty acres of land to vote for members of the Senate, and payment of taxes and twelve months' residence to vote for members of the House of Commons; and, in South Carolina, a freehold of fifty acres of land, or a town lot, or a tax of three shillings sterling actually paid the preceding year.

What were the regulations of suffrage existing in the four remaining States of New Hampshire, Rhode Island, Delaware, and Georgia, at the time of the formation of the constitution of the United States, we are not informed. At present, it is believed, there is not a single one of the States, old or new, in which a special qualification of any kind, whether of property, education, settled abode, or other pledge of "permanent, common interest," is required for the exercise of the right of suffrage; except that, in a few of the States, the payment of some tax of undefined and trivial amount may be prescribed. With this exception, twenty-one years of age, and one or two years' residence in the State or county, have become the sole conditions of that invaluable privilege on which all the operations of representative government primarily depend, and from which they take their character for good or evil.

representative government, as alike a principle and practice of republican legislation in America. *Qualified* suffrage, in contradistinction to *universal* suffrage, was thus consecrated, so far as depended on them, as the basis of the representative system of the United States. It did not enter into their imaginations to conceive, that the day would ever come, when, in the eager race of contending parties for popularity, every practical landmark which guarded the purity and sanctity of the great franchise that gives direction as well as motion to the political system was to be swept away.

The proposition of Mr. Morris led to some interchange of opinion in the convention with regard to the right of suffrage in general, in which, while different views were expressed respecting the particular qualifications that would best guard, without too much shackling, its exercise, none denied the necessity of such qualifications as would afford a reasonable guarantee for the fidelity and independence, at least, of the voter. The true rule, Colonel Mason thought, without restricting its application to freeholders alone, was that laid down in the bill of rights of Virginia, and which made the electoral capacity depend on "sufficient evidence of permanent common interest with and attachment to the community." Mr. Madison thus announced his opinions: —

"Viewing the subject in its merits alone, the freeholders of the country would be the safest depositaries of republican liberty. In future times,

a great majority of the people will not only be without landed, but any other sort of property. These will either combine under the influence of their common situation, — in which case the rights of property and the public liberty will not be secure in their hands, — or, what is more probable, they will become the tools of opulence and ambition, in which case there will be equal danger on another side."

Mr. Madison here pointed to one of the greatest, though unfortunately least understood, dangers of universal suffrage, — its susceptibility, through seduction or terror, of being employed by artful and ambitious leaders as an instrument for the oppression and enslavement of the people themselves. Such had been the melancholy but instructive experience of the once proud democratic States of antiquity. Such has been since the impressive lesson taught by one of the most powerful and at the same time most democratic nations of modern Europe, — a nation in which, within the brief space of half a century, an imperial throne has been twice reared, openly and in the face of day, on the platform of universal suffrage.[1]

The provision of the reported constitution, which next in order engaged the attention of the convention, involved the important question of the political privileges to be allowed to naturalized foreigners. No principle, perhaps, has had a larger share than

[1] The first step taken by Louis Napoleon when paving the way for his imperial aspirations, after the violent dissolution of the National

this in determining the destinies of the United States; and it becomes, therefore, a matter of no small interest to learn what were the views of it entertained by the founders of the Constitution. Although the particular question to be decided by the convention related only to the period of citizenship necessary for eligibility to either House of Congress, its consideration brought into discussion the whole subject of the policy to be pursued in the admission of foreigners to the privileges of American citizenship.

The constitution reported by the committee of detail provided that "every member of the House of Representatives shall have been a citizen in the United States for at least three years before his election." Colonel Mason moved that seven years, instead of three, be required. In support of his motion, he said, "Although he was in favor of opening a wide door for emigrants, he did not choose to let foreigners and adventurers make laws

Assembly, was to issue a decree re-establishing universal suffrage. That memorable decree, associating in graphic juxtaposition the proclamation of universal suffrage and the dissolution of the Republic, was in these words of pregnant brevity: —

"The National Assembly is dissolved.
Universal suffrage is re-established.
The French people are convoked in their electoral districts from the 14th to the 21st of December.
The Council of State is dissolved.
The Minister of the Interior is charged with the execution of the present decree.
Given at the Palace of the Elysée, the 2d of December, 1851.
LOUIS NAPOLEON BONAPARTE."

The response of universal suffrage to the appeal thus made to it, was the ratification of the overthrow of the Republic by the overwhelming vote of seven millions, four hundred and thirty-nine thousand, two hundred and sixteen votes for it; to six hundred and forty thousand, seven hundred and thirty-seven, against it!

for us. Citizenship for three years was not enough for ensuring that local knowledge which ought to be possessed by the representatives." The motion was carried with the concurrence of all the States, except Connecticut.

A few days afterwards, the vote was reconsidered at the instance of Mr. Wilson, who proposed to make the probationary period of citizenship four years in lieu of seven. The mover of this amendment was by birth a foreigner, who had rendered services of the highest value, and with an ability and zeal unsurpassed, to the cause of American liberty. But notwithstanding the exalted respect entertained for him, and although he was supported by Governor Randolph, Colonel Hamilton, and Mr. Madison, with an earnestness heightened by their personal consideration for the mover, the convention negatived the amendment, and adhered to their original vote, by the decisive majority of eight States to three.

The question came up again in connection with the period of citizenship required for membership of the Senate, which the committee of detail, in their draught of a constitution, had made only four years. The convention considered this probation entirely inadequate for the senatorial trust, and finally extended it to nine years. A proposition for even fourteen years received the votes of four States. Colonel Mason, in sustaining it, declared, "Were it not that many, not natives of the country, had acquired great credit during the Revolution,

he should be for restraining the eligibility into the Senate to natives." Mr. Charles Pinckney remarked, "As the Senate is to have the power of making treaties, and managing our foreign relations, there is peculiar danger and impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject, who made it death for any stranger to intrude his voice into their legislative proceedings."

The same views were strongly urged by Mr. Pierce Butler, himself a foreigner by birth and education, who expressed his sentiments with a noble frankness that did him the highest honor.

"He was decidedly opposed," he said, "to the admission of foreigners without a long residence in the country. They bring with them not only attachments to other countries, but ideas of government so distinct from ours, that, in every point of view, they are dangerous. He acknowledged, that, if he himself had been called into public life within a short time after his coming to America, his foreign habits, opinions, and attachments would have rendered him an improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject."

Dr. Franklin, Mr. Madison, Governor Randolph, and Mr. Wilson, each addressed persuasive appeals to the convention against inserting too stringent a rule of probation in the constitution, lest it might exclude from the public service men of distin-

guished ability, who, though of foreign birth, had given unquestionable proofs of their American sympathies, and of their attachment to the principles of republican liberty. But the convention, feeling the necessity of establishing some sound general rule on the subject, and taking counsel only of what they considered the highest interest and safety of the republic, remained inflexible in their determination; and not only maintained the restriction of seven years' citizenship for the House of Representatives, and nine years' for the Senate, but afterwards superadded a provision that no person should be eligible to the office of President except a natural-born citizen, or a citizen at the time of the adoption of the Constitution who had been fourteen years a resident within the United States.

Such was the care with which the wise men who framed the Constitution of the United States sought to guard the laws and institutions of America against the danger of foreign principles and foreign attachments. But while they closed, by constitutional barriers, the high official trusts of the government against foreign eligibility, except after long terms of probation, the power of passing uniform laws on the subject of naturalization, which was left to the future legislative authority of the Union, has been since so exercised, that by its means, concurring with the lax legislation of many of the States on the right of suffrage, a vast body of foreigners, wholly uninitiated in the

principles of American constitutional freedom, has come to be invested with the paramount privilege of electing the incumbents, not only of those offices, but all others of the Republic, both State and Federal.

When the Roman Republic, at the close of the social war, by a sweeping concession admitted to the privilege of voting those who, although bound to a community of public dangers and burthens as allies, were not Roman citizens by birth-right, it opened the door at once for those civil convulsions which speedily put an end to the existence and to the very name of the Republic. "From that moment," a great oracle of political wisdom has said, "Rome was no longer that proud Commonwealth whose people had but one spirit, the same love of liberty, and the same hatred of tyranny; in whom the jealousy of power, always mingled with respect, was but a warmer devotion to freedom. The love of country was no more, and Roman sentiments were at an end."[1]

The deep convictions entertained on this subject by the founders of the Constitution were shared by the other great American statesmen of that day. Mr. Jefferson, then in France as the

[1] The following is the noble language of Montesquieu referred to in the text: "Pour lors, Rome ne fut plus cette ville, dont le peuple n'avait qu'un même esprit, un même amour pour la liberté, une même haine pour la tyrannie; où cette jalousie du pouvoir du Sénat et des prérogatives des grands, toujours mêlée de respect, n'etait qu'un amour de l'égalité. On n'eut plus le même amour pour la patrie, et les sentiments Romains ne furent plus." — Grandeur et Décadence des Romains, chap. IX.

diplomatic representative of America, gave to his countrymen, in the same year that the convention was assembled in council at Philadelphia,[1] the following impressive warning, which deserves to be recalled in conjunction with the sage deliberations of the convention: —

"The present desire of America is to produce rapid population by as great importations of foreigners as possible. But is this founded on good policy? The emigrants will bring with them the principles of the governments they leave, imbibed in their early youth; or, if able to throw them off, it will be in exchange for an unbounded licentiousness, passing, as is usual, from one extreme to another. It would be a miracle were they to stop precisely at the point of temperate liberty. These principles, with their language, they will transmit to their children. In proportion to their numbers, they will share with us the legislation. They will infuse into it their spirit; warp and bias its direction; and render it a heterogeneous, incoherent, distracted mass."

After the settlement of these provisions of the Constitution, the next section of the reported draught that presented itself for consideration was the one relating to the origination of money bills in the House of Representatives, which was in the very terms of the resolution previously adopted by the convention. Mr. Charles Pinckney moved to

[1] The "Notes on Virginia" were first published in London, in the year 1787, while Mr. Jefferson was residing as Minister in France.

strike out the section, as "clogging the government," while it gave no important privilege to the House of Representatives. Colonel Mason strenuously opposed the motion of Mr. Pinckney, which, he said, "would unhinge the compromise," of which it formed a part, concerning the equal representation of the larger and smaller States in the Senate. The motion was sustained, on the other hand, by Mr. Madison, who considered the exclusive right of originating money bills by the House of Representatives "as of no advantage to the larger States, as fettering the government, and as a source of injurious altercations between the two Houses."

On putting the question, a considerable majority of the States — New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, and Georgia — voted for striking out the section; while only four States, New Hampshire, Massachusetts, Connecticut, and North Carolina, voted against the motion. Among the States voting in the affirmative on the motion to strike out, were three,— New Jersey, Delaware, and Maryland,— who had contended with great earnestness for the equal representation of the smaller States in the Senate, and were considered, therefore, as specially bound to observe, in all its parts, the compromise that had been entered into on that subject.

The vote of the convention for striking out the section excited much dissatisfaction. Governor Randolph, declaring that "the success of the

whole plan was endangered by it," gave notice on the following day that he should move a reconsideration of the vote. The reconsideration took place on the 13th of August, when he proposed the section in a modified form, so as to obviate some of the objections that had been made to it. He waived all argument on the occasion, and simply and significantly "reminded the smaller States of the *compromise* by which the larger States were *entitled* to this privilege." His proposition was warmly sustained by Colonel Mason, Mr. Gerry, and Mr. Dickinson; all of whom, under the influence of an apparent but unreal analogy derived from the British Constitution, and a supposed jealousy in the public mind of the senatorial branch of the legislature, insisted, with extraordinary zeal, upon the exclusion of that branch from the power of either originating or amending money bills.

Their arguments were ably answered by Mr. Wilson, Mr. Gouverneur Morris, Mr. Madison, and Mr. Rutledge; when, the question being put on Mr. Randolph's proposition, four States voted in favor of it, and seven against it. The question was then again taken on the section as it stood in the draught of the committee of detail; and it was again rejected by the same vote that was given on the proposition of Governor Randolph. In these two last divisions, Connecticut changed her former vote, and joined the three smaller States mentioned above, who, with her, had been

parties to the *compromise*, in voting against the section; while Virginia, who had before voted against it, now voted for it. The change of the vote of Virginia, on this occasion, was caused by the change of General Washington's vote alone; and it forms the only instance in the proceedings of the convention, in which, on any important division, he and Mr. Madison voted differently. The following explanatory note was made by Mr. Madison at the time. "He [General Washington] disapproved, and till now voted against the exclusive privilege. He gave up his judgment, he said, because it was not of very material weight with him, and was made an essential point with others, who, if disappointed, might be less cordial in other points of real weight."

Notwithstanding these repeated adverse decisions of the convention, such was the perseverance of the friends of the proposed restriction that it was brought forward again, a few days afterwards, in the shape of an amendment moved by Mr. Strong, of Massachusetts, to the 12th section of the sixth article of the draught of the committee of detail. Colonel Mason made one or two earnest appeals to the convention to take up this amendment for consideration; but the section, to which the amendment was offered, was laid over from time to time until the 31st of August, when, with other postponed parts of the Constitution, it was referred to a committee of one member for each State. The action of that committee on the subject, and

the ultimate decision of the convention with regard to it, we shall have occasion to notice in a subsequent stage of this narrative.

The fourth and fifth articles of the Constitution reported by the committee of detail having been disposed of, the convention proceeded to the consideration of the sixth article consisting of thirteen sections, and relating mainly to the interior government and economy of the two Houses of Congress. The first debatable point of interest that arose in the consideration of this article grew out of the ninth section, which declared the members of either House incapable of being appointed to any office under the authority of the United States during the terms for which they were respectively chosen; and, in the case of Senators, the incapacitation was extended to one year afterwards.

We have already seen, in noticing the resolutions previously adopted by the convention on the subject, and to which this provision of the reported Constitution exactly conformed, that the proposed ineligibility of members of Congress to all other offices gave rise to much difference of opinion in the convention. The friends of the disqualification seemed to insist upon it now with the greater energy and warmth, in consequence of the disappointment they had just met with in regard to the restriction they were desirous of imposing upon the Senate in the case of money bills. The language used in the debate furnished a significant indication of the feeling of discon-

tent which was beginning to spring up in certain quarters of the convention.

In answer to Mr. Charles Pinckney, who was opposed to the provision in the reported Constitution and moved an amendment of it, Colonel Mason "ironically proposed to strike out the whole section as a more effectual expedient for encouraging that exotic corruption which might not otherwise thrive so well in the American soil; for completing that aristocracy which was probably in the contemplation of some among us; and for inviting into the legislature those generous and benevolent characters, who will do justice to each other's merit by carving out offices and rewards for it."[1]

Mr. Gerry said, "If the Senate were to appoint ambassadors, as seems to be intended, they will multiply embassies for their own sakes. He was not so fond of those productions as to wish to establish nurseries for them. The misdeeds of the former government will produce a critical attention to the opportunites afforded by the new system to like or greater abuses. As it now stands, it is as complete an aristocracy as ever was framed. If great powers should be given to the Senate, we shall be governed in reality by a junto, as has been apprehended."

Mr. Williamson, of North Carolina, in discussing the proposition before the convention, referred to the recent decision concerning money bills. "That clause," he said, "was dead. Its ghost, he was

[1] Madison Debates, vol. III. p. 1317.

afraid, would, notwithstanding, haunt us. All that was said against it was, that the restriction was not *convenient*. We have now got a House of Lords which is to originate money bills. To avoid another *inconvenience*, we are to have a whole legislature at liberty to cut out offices for one another. Bad as the Constitution has been made by expunging the restriction on the Senate concerning money bills, he did not wish to make it worse by expunging the present section."

Views of an opposite character were expressed, with equal earnestness, by Colonel Mercer of Maryland, Mr. Gouverneur Morris, and Mr. Wilson, as well as Mr. Pinckney. It was at length agreed to postpone the farther consideration of the section until the powers of the Senate should be ascertained; and it was ultimately referred to the same committee to which other postponed parts of the Constitution were referred, and whose report, as we shall see, had a most important agency in determining the final shape of the Constitution.

The next section of the sixth article proposed that the compensation of the members of each House should be ascertained, and paid by the respective States. This provision, by some unexplained irregularity, was introduced into the draught of the committee of detail, although it was in direct conflict with the sense of the convention previously declared. It was now rejected; and a proposition, that the compensation be fixed by act of Congress and paid out of the treasury of the United States,

adopted by a majority of eight States to two. No permanent change of an important character being made in any of the other sections of the sixth article, the convention proceeded to the consideration of the seventh, the main object of which was to define and enumerate the powers of Congress.

The general principle only, with regard to the character and extent of the powers of Congress, had been settled by the resolution which the convention passed on the subject; and it was left to the committee to draw it out into the necessary details. The plan reported by them assigned to Congress the great powers of raising a national revenue by taxes, duties, imposts, and excises; of regulating commerce with foreign powers, and among the several States; of borrowing money; of coinage, and fixing the standard of weights and measures; of declaring war; raising armies; providing a navy; of calling forth the militia to aid in the execution of the laws, suppressing insurrections, and repelling invasions; of establishing postal communications; and of passing uniform laws on the subject of naturalization. With these leading powers, were associated others of a subsidiary character necessary to give them full effect.

To supply what seemed to him important omissions in this scheme of congressional powers, Mr. Madison submitted a proposition that the committee of detail be instructed to consider the expediency of superadding others with regard to the disposition of the unappropriated lands of the United States,

and the institution of temporary governments therein; the regulation of intercourse with the Indian tribes; the exercise of exclusive legislation over the seat of the Federal government; the acquisition, with the consent of the States, of sites for forts, arsenals, and other necessary establishments; the securing to authors their copy-rights for a limited period; the establishment of a university; the encouragement, by premiums and other suitable provisions, of useful knowledge and discoveries; and the granting of charters of incorporation, in cases where the public good may require them, and the authority of a single State is incompetent. All of these additional powers, with the exception of the three last, were finally ingrafted on the Constitution; and, with the power of organizing, arming, and disciplining the militia, proposed by Colonel Mason, and a few auxiliary provisions suggested by other members, completed the circle of legislative authority vested in the two Houses of Congress.

The course of our narrative now brings us to a transaction of a very extraordinary character, — more of the nature of a commercial bargain than a political compromise, — which the posterity of neither of the parties to it is probably able, at this day, to regard with entire satisfaction. The fourth section of the seventh article of the Constitution, reported by the committee of detail, provided that "no tax or duty shall be laid by the legislature on articles exported from any State, nor on the migration or importation of such persons as

the several States shall think proper to admit; nor shall such migration or importation be prohibited." This provision was introduced into the draught of the committee without the sanction of any previous vote or resolution of the convention, and was probably inserted upon the urgent representation of individual members.

The clause prohibiting the imposition of any duty on exports by the national authority was strongly objected to, as leaving it in the power of the States, having facilities for foreign commerce, to burthen vexatiously the productions of other States passing through their limits to a foreign market.[1] To mitigate this evil, Mr. Madison proposed to allow Congress, with the concurrence of two-thirds of each House, to lay duties on exports, when they should be deemed necessary; but the motion was lost, — five States voting for it, and six against it. The question then occurred on the residue of the section; which Mr. Martin, of Maryland, moved to amend, so as to authorize Congress to lay a tax or prohibition, at its discretion, upon the importation of slaves. The provision, as it stood in the draught of the committee, would, he said, give encouragement to the slave-trade; and he held it "inconsistent with the principles of the Revolution, and dishonorable to the American character, to have such a feature in the Constitution."

[1] By a subsequent vote of the convention, the States were restrained from laying duties on exports or imports, except for special purposes and to a limited extent.

Mr. Rutledge and Mr. Charles Pinckney, of South Carolina, warmly remonstrated against Mr. Martin's proposition, and declared, with great emphasis, that South Carolina would never accede to the Constitution if it prohibited the slave-trade.

Mr. Ellsworth and Mr. Sherman, of Connecticut, were both for leaving the clause as it stands. "Let every State," they said, "import what they please. As the States were now possessed of the right to import slaves; as the public good does not require it to be taken from them; and as it was expedient to have as few objections as possible to the proposed scheme of government, it was best to leave the matter where we find it."

Colonel Mason expressed himself with great energy in opposition to these views. "This infernal traffic," he said, "originated in the avarice of British merchants. The British Government constantly checked the attempts of Virginia to put a stop to it. The present question concerns, not the importing States alone, but the whole Union. Maryland and Virginia had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All this would be in vain, if South Carolina and Georgia were at liberty to import." Declaring, then, with great frankness the strong sentiments of aversion he entertained to slavery itself, he concluded by saying "he lamented that some of our Eastern brethren had, from a lust of gain, embarked in this nefarious traffic. As to the States being in posses-

sion of the right to import, this was the case with many other rights now to be properly given up."

The discussion was continued with animation; and, in the course of it, General Pinckney, of South Carolina, and Mr. Baldwin, of Georgia, both repeated the declaration already made, that their States would never accept the Constitution, with the prohibition of the slave-trade in it.

Mr. Wilson, of Pennsylvania, said, "If South Carolina and Georgia were themselves disposed to get rid of the importation of slaves in a short time, as had been suggested, they would never refuse to unite because the importation might be prohibited." Mr. Dickinson, of Delaware, considered it "inadmissible, on every principle of honor and safety, that the importation of slaves should be authorized to the States by the Constitution." Mr. Gerry, of Massachusetts, acquiesced, with some reserve, in the complying policy of the delegates of Connecticut; while his colleague, Mr. King, made a measured resistance to it on grounds of State expediency. Mr. Langdon, of New Hampshire, protested warmly against it as a violation of "good conscience."

In this state of things, Mr. Gouverneur Morris, adverting to the circumstance that the sixth section of the same article which was now under consideration contained a provision that "no navigation act should pass without the consent of two-thirds of the members present in each House," — a provision particularly affecting the interests of the

New-England States, — suggested, that this, together with the fourth and fifth sections, should be referred to a committee, in order that "a bargain," as he called it, might be formed between the parties out of these elements of special local interest, on the one side and the other. His suggestion was adopted; and the three sections were referred to a committee, consisting of a member for each State. On the 24th of August, — the second day after the reference, — the committee made their report, recommending —

That the fourth section be so amended as to declare, "that the immigration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by Congress prior to the year 1800; but a tax or duty may be imposed on such importation at a rate not exceeding the average of the duties laid on imports;

"That the fifth section [providing that no capitation tax shall be laid except in proportion to the whole number of free inhabitants, and three-fifths of the slaves] should remain unaltered;

"And that the sixth section [restraining the passage of a navigation act, unless by a vote of two-thirds of both Houses of Congress] should be stricken out."

On the following day, the report was taken up for consideration. The two Southern States, who contended for the privilege of continuing the importation of slaves, were not satisfied with the

period allowed for it by the report; and General Pinckney, of South Carolina, moved to insert the year 1808, in lieu of 1800, as the term of the permitted traffic. His motion was seconded by Mr. Gorham, of *Massachusetts*. It was earnestly opposed by Mr. Madison, who said, "Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term," he added, "will be more dishonorable to the American character than to say nothing about it in the Constitution."

The coalition that had taken place rendered all remonstrance vain, and General Pinckney's motion was carried in the affirmative; all the three *New-England* States, with South Carolina, Georgia, Maryland, and North Carolina, voting for it; and Virginia, Pennsylvania, New Jersey, and Delaware, against it. The fifth section, relating to the rule for apportioning a capitation tax, was then agreed to, as recommended by the committee, without debate. The residue of the report, recommending that the sixth section, which imposed a restriction on the passage of a navigation act, should be stricken out altogether, was taken up four days later; when Mr. Charles Pinckney moved to postpone it, in order to consider a proposition submitted by him, that "no act whatever for the regulation of commerce shall be passed without the assent of two-thirds of the members of each House."

In the debate which arose on this proposition, General Pinckney and Mr. Butler, of South Caro-

lina,— while avowing their conviction that a simple majority vote of Congress, in regulations of commerce, would be attended with serious hazards to the interests of the Southern States,— earnestly invoked a spirit of conciliation towards the Eastern States on account of the liberality they had shown to the wishes of the two Southernmost States with regard to the importation of slaves; and declared their determination to vote against any special restriction upon Congress in the exercise of their commercial powers. The motion of Mr. Charles Pinckney to postpone this part of the report of the committee, in favor of the proposition submitted by him, was then rejected,— four States only, Maryland, Virginia, North Carolina, and Georgia, voting for it; and the "bargain" that had been entered into, in which the legalization of the slave-trade for twenty years on one side was the price of the abandonment of the two-thirds' vote in the passage of a navigation act on the other, received its final ratification without a further struggle, which had plainly become useless and unavailing.

This transaction undoubtedly made a most disagreeable impression on the minds of many members of the convention, and seemed at once to convert the feeling of partial dissatisfaction that had been already excited, in certain quarters, by one or two votes of the convention, into a sentiment of incurable alienation and disgust. Governor Randolph, of Virginia, a few days after the

first part of the bargain had been ratified, and while the latter part was pending on the motion of Mr. Charles Pinckney to substitute his proposition for it, declared that "there were features so odious in the Constitution, as it now stands, that he doubted whether he should be able to agree to it. A rejection of the pending motion would complete the deformity of the system." Colonel Mason, two days later, declared that "he would sooner chop off his right hand than put it to the Constitution, as it now stands. He wished to see some points, not yet decided, brought to a decision, before being compelled to vote on this article. [The article respecting the mode of ratifying the Constitution was then under consideration.] Should these points be improperly settled, his wish would be to bring the whole subject before another general convention." [1]

[1] Among the manuscripts of Mr. Jefferson, which he designated as *ana*, is a memorandum of a conversation with Colonel Mason, which, though containing some errors of detail with regard to collateral matters, challenges attention on account of the lively recital it gives, from the lips of a member of the convention, of the transaction referred to in the text. It is in these words: —

"Gunston Hall, Sept. 30th, 1792, *ex relatione* George Mason. The Constitution, as agreed to till a fortnight before the convention rose, was such a one as he would have set his hand and heart to. 1. The president was to be elected for seven years, then ineligible for seven years more. 2. Rotation in Senate. [Ineligibility of both senators and representatives to office, during their terms of service, was probably here meant.] 3. A vote of two-thirds on particular subjects, and expressly on that of navigation. The three New-England States were constantly with us in all questions, — Rhode Island not there, and New York seldom; so that it was these three States, with the five Southern States, against Pennsylvania, New Jersey, and Delaware.

"With respect to the importation of slaves, it was left to Congress [so far as the previous

In the debate on Mr. Pinckney's proposition, Mr. Madison took occasion to state his views as to the probable future operation of the commercial powers vested in the Union upon the respective interests of the Northern and Southern States. He was unwilling to believe, that the exercise of those powers by a majority of Congress, acting under manifold and salutary checks, internal and external, could be fraught with serious danger to

resolutions of the convention itself were concerned]. This disturbed the two Southernmost States, who knew that Congress would immediately suppress the importation of slaves. Those two States, therefore, struck up a bargain with the three New-England States, that, if they would join to admit slaves for some years, the two Southernmost States would join in changing the clause which required two-thirds of the legislature in any vote. It was done. These articles were changed accordingly; and, from that moment, the two Southernmost States and the three Northern ones joined Pennsylvania, Jersey, and Delaware, and made the majority of eight to three against us, instead of eight to three for us, as it had been through the whole convention. Under this coalition, the great principles of the Constitution were changed in the last days of the convention."

It is proper to remark, that the classification here made of the States, with reference to their general votes in the convention, does not appear to have been accurate. It was correct in relation to certain questions in which Colonel Mason himself took a particular interest; such as the clause restraining the origination of money-bills to the House of Representatives, and that also which rendered members of Congress ineligible to other offices for a certain period. In these questions, as we have seen, the three Eastern States sustained Colonel Mason's views, while the Middle States opposed them. But, generally, the Middle States acted much more in unison with the Southern States than the Eastern States did.

We have had occasion to show, that, while the vital question of the freedom of the Mississippi was pending before Congress, it was New Jersey and Pennsylvania that finally rallied to the support of the Southern States, and turned the scale against the project of occlusion espoused by the Eastern States and New York. In the very question referred to in the text, respecting the importation of slaves, we see Pennsylvania, New Jersey, and Delaware voting with a leading Southern State, Virginia. In the great struggle concerning the rep-

any portion of the Confederacy. While sensible that the leading division of interests in the United States was between the Northern and Southern, or non-slaveholding and slaveholding States, which he was the first, indeed, to bring distinctly to the notice of the convention, he yet thought that the subdivision and diversity of interests among the Northern States themselves, together with the fundamental checks provided by the Constitution, and the balance of power that would be ultimately held by the new agricultural States in the West, would be effectual, in the normal operation of the system, to prevent unjust combinations of the North to the prejudice of the South. His views on this subject exhibit so much depth of reflection, and are so intimately connected with his whole theory of the legitimate operation of the government, that we give them here, as they were delivered by him in the convention at the birth of the Constitution.

"He observed that the disadvantages to the Southern States from a navigation act lay chiefly

resentation of the States in the two branches of Congress, Pennsylvania, the leading Middle State, stood firmly by the side of the Southern States; while Massachusetts finally abandoned them, and Connecticut and New Hampshire were steadily against them. What influence the coalition formed between the two Southernmost and the three New-England States, respecting the slave-trade and the regulation of commerce, had upon other questions before the convention, it is difficult to determine from the naked journal of the convention; and upon that point, therefore, the contemporary testimony of members of the convention, especially of so distinguished a member as Colonel Mason, will command respect, when it is not opposed to the record

in a temporary rise of freights; attended, however, with an increase of Southern as well as Northern shipping, — with the emigration of Northern seamen and Northern merchants to the Southern States, — and with a removal of the existing and injurious retaliations among the States on each other. The power of foreign nations to obstruct our retaliatory measures on them by a corrupt influence would be less, if a majority should be made competent, than if two-thirds of each House should be required, to legislative acts in this case. An abuse of the power would be qualified with all these good effects.

"But he thought an abuse was rendered improbable by the provision of two branches, — by the independence of the Senate, — by the negative of the executive, — by the interest of Connecticut and New Jersey, which were agricultural, not commercial States, — by the interior interest, which was also agricultural in the most commercial States, — and by the accession of Western States, which would be altogether agricultural. He added that the Southern States would derive an essential advantage in the general security afforded by the increase of our maritime strength. He stated the vulnerable situation of them all, and of Virginia in particular. The increase of the coasting trade and of seamen would also be favorable to the Southern States by increasing the consumption of their produce."

Had things continued in their early and natural

course, — free from the corrupt and perverting influence of political combinations, — such in all probability, according to Mr. Madison's hopes and anticipations, would have been the mutual compensations and practical equity of a wise and moderate system of commercial legislation, flowing from the principles of the Constitution, and the laws inherent in the relative position and interests of the different States.

The various questions, arising out of the seventh article of the Constitution reported by the committee of detail, being at length settled, the convention passed to the eighth article, declaring the Constitution of the United States, and acts of Congress in pursuance of it, and treaties made under the authority of the United States, to be the supreme law of the land; which, after a slight verbal modification proposed by Mr. Rutledge, was unanimously adopted.

The ninth article of the draught of the committee, relating to the separate powers of the Senate, assigned to that body the making of treaties; the appointment of ambassadors and judges of the supreme court; and the duty of organizing, according to a prescribed method, special courts of commissioners for the determination of controversies between two or more States respecting territory or jurisdiction; and controversies between private citizens claiming lands under grants of different States. On the consideration of this article, it was thought that the Senate would be too numerous

a body to conduct negotiations or to make appointments to office; and it was finally determined to give them the supervisory power of confirming or rejecting treaties, and nominations to office, when made by the executive, in lieu of the absolute and original power of making either by their sole agency. The class of controversies, also, for which, by the scheme of the committee, they were to organize special tribunals, was ultimately transferred to the supreme court, while the trial of impeachments for official delinquencies, which, by that scheme, was assigned to the supreme court, was, by the vote of the convention, transferred to the Senate.

The convention was now brought, in the progress of their deliberations, to confront again the difficult problem of the constitution of the executive department, which had already been the occasion of so much vacillation and embarrassment in their proceedings. The tenth article of the plan reported by the committee of detail provided, in pursuance of the resolution previously adopted by the convention, that the executive power should be vested in a single magistrate, to be styled the President of the United States, who was to be chosen by the national legislature; to hold his office for seven years, under the condition of ineligibility a second time; and to be removable from office on impeachment and conviction for treason, bribery, or corruption. His general powers were described to be to see the laws of the

United States faithfully executed; to commission all officers of the United States, and to appoint those whose appointment was not otherwise provided for by the Constitution; to receive ambassadors; to grant reprieves and pardons; and to be commander of the army and navy of the United States, and the militia of the several States.

In considering this article, difficulties were presented at every step. The objections, formerly urged against an appointment of the chief executive magistrate by the legislature, retained in many minds their undiminished force. A motion was first made by Mr. Carroll of Maryland, and seconded by Mr. Wilson, to refer the election directly to the people; but this proposition received the votes of only two States, Pennsylvania and Delaware, — all the other nine States present voting against it. It was then moved that the appointment be made "by electors to be chosen by the people of the several States;" on which motion the division was five States in the affirmative, and six in the negative. An earnest struggle occurred on the question whether the legislative appointment should be made by "joint" or "concurrent" vote of the two Houses, and terminated in favor of the joint vote by a majority of seven States to four.

The power proposed to be vested in the president of making appointments to office in cases not otherwise provided for, and without the concurrence of any other body, also met with very zealous

opposition. Mr. Sherman, while admitting that certain offices connected with the executive administration ought to be appointed by the president, contended that many others ought not to be,— remarking that "herein lay the corruption in Great Britain." Governor Randolph said that "the power of appointments was a formidable one, whether in executive or legislative hands;" and suggested the propriety of Congress being empowered to provide, by law, for referring certain Federal appointments to the State authorities. A proposition to that effect was actually made by Mr. Dickinson; but it received the votes of only three States,— Connecticut, Virginia, and Georgia.

The great diversity of opinion that disclosed itself in the convention, with regard to these and other questions connected with the executive department, led to the postponement of both sections of the article relating to that department, until all the subsequent articles of the draught of the committee of detail, which furnished but little matter for controversy, had passed under review, and, for the most part, been definitively acted on by the convention.[1] A committee, consisting of a member

[1] While this great diversity of opinion prevailed in the convention respecting the constitution of the executive department, there was absolute unanimity with regard to the leading principles to be observed in the organization of the judiciary. It is a striking illustration of the wise and conservative spirit of the convention, that the entire independence of the judiciary, guarded by the tenure of good behavior, was treated as a *postulate* of regular government and of sound republican policy, from which no one, in any stage of its proceedings, ventured to dissent. It was a fundamental principle in all the various

for each State, was then appointed to take into their consideration all such parts of the Constitution reported by the committee of detail as had been postponed, including, with the several subjects before mentioned, the tenth article relating to the executive. This committee — called the committee of eleven — was appointed on the 31st of August, and exerted a decisive influence on the completion of the Constitution, by the adjustment of many questions that had been adjourned for their difficulty. It was composed of Mr. Gilman for the State of New Hampshire, Mr. King for Massachusetts, Mr. Sherman for Connecticut, Mr. Brearly for New Jersey, Mr. Gouverneur Morris for Pennsylvania, Mr. Dickinson for Delaware, Mr. Carroll for Maryland, Mr. Madison for Virginia, Mr. Williamson for North Carolina, Mr. Butler for South Carolina, and Mr. Baldwin for Georgia.

On the 4th of September, the committee made their report respecting the executive, presenting an entirely new plan with regard to the organization of that department. For the election of president, they recommended that each State should appoint, in such manner as its legislature may direct, a number of electors equal to the number of its sena-

plans proposed to the convention, — in the New-Jersey as well as the Virginia plan, and in both Mr. Pinckney's and Colonel Hamilton's. When Mr. Dickinson, without suggesting a departure from the principle, proposed, in imitation of the British example, to make the judges removable by the executive on the joint application of both Houses of Congress, even this modification received the vote of but a single State, Connecticut. — See Madison Debates, vol. III. pp. 1436–1438; and idem, vol. II. p. 1135.

tors and representatives in Congress; that these electors should meet in their respective States, and vote by ballot for two persons, one to be president, and the other vice-president; that lists of these votes, duly signed and certified, should be transmitted under seal to the Senate of the United States, by which body, the votes, on a certain day, were to be opened and counted; and the person having the greatest number of votes, provided it were a majority of the whole, should be president, and the person having the next greatest number to be vice-president. In the event of two persons receiving an equal number of votes, and that number a majority of the whole, then the Senate should immediately choose by ballot one of them for president; and, in like manner, if no person received a majority, the *Senate* should choose the president from the five highest on the list.

It was proposed by the committee, that the president should hold his office for four years instead of seven, omitting any restriction as to re-eligibility; and that, in addition to his ordinary executive functions, he should have the power, with the concurrence of two-thirds of the Senate, of making treaties, and also that of nominating, and, by and with the advice and consent of the Senate, appointing ambassadors and other public ministers, judges, and all other officers of the United States whose appointments are not otherwise provided for by the Constitution.

On the presentation of the report, Governor

Randolph and Mr. Charles Pinckney called upon the committee to explain to the convention the reasons by which they had been governed in proposing so total a change of the plan hitherto contemplated for the election of the chief executive magistrate. In answer to this demand, the leading considerations for the change were stated to be "the great danger of intrigue and faction, if the appointment should be made by the legislature;" the "indispensable necessity of making the executive independent of the legislature," which could not be done, if the legislature should appoint, otherwise than by declaring the president ineligible a second time,—a question of great importance, that ought to be left free and disembarrassed, to be decided on its own merits; and, finally, the security which the proposed mode of election would afford against "cabal and corruption." As the electors would assemble on the same day in their respective States, and at a wide distance from each other, there would be no opportunity for the exertion of improper influences between the different colleges of electors; which being, moreover, ephemeral bodies, called together for a special and momentary occasion, would be far less exposed to such influences from any quarter than a pre-existing and continuing body like the national legislature.

Colonel Mason, who had hitherto been the steady champion of a legislative appointment of the executive, frankly admitted "that the plan of the

committee had removed some capital objections, particularly the danger of cabal and corruption. It was liable, however," he thought, "to this strong objection,—that nineteen times in twenty the president would be chosen by the Senate, an improper body for the purpose."

Mr. Wilson also expressed his opinions with regard to the plan of the committee. "The subject," he said, "has greatly divided the House, and will also divide the people out of doors. It is, in truth, the most difficult of all on which we have had to decide. He had never made up an opinion on it entirely satisfactory to his own mind. He thought the plan, on the whole, a valuable improvement on the former. It gets rid of one great evil,—that of cabal and corruption; and continental characters will multiply, as we more and more coalesce, so as to enable the electors in every part of the Union to know and judge of them. It clears the way, also, for a discussion of the question of re-eligibility on its own merits, which the former mode of election seemed to forbid. He thought it might be better, however, to refer the eventual appointment to the legislature than to the Senate, and to confine it to a smaller number than five of the candidates."

After a further discussion of the report, in which Mr. Butler and Mr. Baldwin expressed themselves favorably towards it, and Governor Randolph and Mr. Charles Pinckney very decidedly against it, the subject was postponed to the following day, when Mr. Wilson moved to amend so much of the plan

as related to the eventual appointment, by striking out "Senate," and inserting "legislature."

Mr. Madison said "he considered it a primary object to render an eventual resort to any part of the legislature improbable. He was apprehensive that the proposed alteration would turn the attention of the large States too much to the appointment of *candidates*, instead of aiming at an effectual appointment of the *officer;* as the large States would predominate in the legislature, which would have the final choice out of the candidates. Whereas if the Senate, in which the small States predominate, should have the final choice, the concerted effort of the large States would be to make the appointment, in the first instance, conclusive."

The motion of Mr. Wilson was rejected by a vote of seven States to three, and one divided. In the progress of the deliberation on the report of the committee, which continued through another day, the opposition to the proposed agency of the Senate in the eventual appointment of president, should the electoral colleges fail to elect, was renewed with increased vivacity and earnestness. Finally, Mr. Sherman moved that the eventual appointment should be referred, not to the legislature collectively, as Mr. Wilson had proposed, but to the House of Representatives voting by States, and the members from each State having one vote. This proposition was carried with the concurrence of ten States, — Delaware only voting in the negative.

In regard to the duration of the presidential office, Mr. Spaight and Mr. Williamson, both of North Carolina, moved to amend the report by inserting "seven" instead of "four" years; intending, if their motion prevailed, to follow it up by a proposition for the restoration of the principle of ineligibility a second time. The motion was, however, rejected by the vote of eight States to three; and, a motion then made to insert "six" instead of "four" receiving the votes of only two States, the proposition of the committee for four years was finally sanctioned by all the States, except North Carolina.

On the following day, Colonel Mason took occasion to express "his dislike of any reference of the power of making appointments to either branch of the legislature. On the other hand, he was averse to vest so dangerous a power in the president alone. As a method of avoiding both, he suggested that a privy council of six members to the president should be established, to be chosen for six years by the Senate [or legislature]; two out of the Eastern, two out of the Middle, and two out of the Southern quarters of the Union, and to go out in rotation, two every second year."

An instruction to the committee to that effect was offered by him, and sustained by his colleague Mr. Madison, by Dr. Franklin, Mr. Wilson, and Mr. Dickinson. Mr. Gouverneur Morris said the subject had been considered in the committee of eleven, "where it was judged that the president,

by persuading his council to concur in his wrong measures, would acquire their protection for them." The proposition received the votes of only three States, — Maryland, South Carolina, and Georgia; all the other eight States, including Virginia, voting against it.

The remaining parts of the report of the committee of eleven, relative to the executive department, were then adopted without any essential modification. The proposition inhibiting to the Senate either the origination or amendment of money bills, which had been referred to the same committee, was returned by them to the convention, with the recommendation to substitute for the generality of the phrase — "bills for raising or appropriating money, or fixing the salaries of public officers" — the more limited description of "bills for raising revenue;" and to allow to the Senate, while restrained from *originating*, the full right of proposing or concurring with *amendments* to these as to other bills. In this altered form, the provision was unanimously adopted.

The proposition respecting the ineligibility of members of the two Houses of Congress to other offices during their respective terms of service, and one year after in the case of senators, was also returned by the committee with alterations. The convention, in acting upon their report, limited the ineligibility to such offices only as may have been created, or the emoluments of which had been increased, during the time for which the members

were respectively elected; and superadded the prohibition — suggested by the committee — against any person, actually holding an office under the United States, being a member of either House, while in the exercise or enjoyment of such office.

All the various articles and sections of the Constitution, reported by the committee of detail, having now been acted upon by the convention, and either adopted, with or without amendments, or superseded by other provisions, a committee of five was appointed on the 8th day of September to "revise the style of and arrange the articles agreed to by the House." Dr. Johnston of Connecticut, Colonel Hamilton, Mr. Gouverneur Morris, Mr. Madison, and Mr. King constituted the committee. On the 12th of September, they presented their draught; which was ordered to be printed, and copies to be furnished to the members.

This draught was prepared by Mr. Morris, to whom the task was turned over by the chairman of the committee; and in the lucid and orderly arrangement of the articles, and in the perspicuity and precision of the diction, where there was any departure from the language used in the proceedings of the convention, it gave proof of the cultivated taste and disciplined mind of the draughtsman. Mr. Madison, in speaking of it many years afterwards, when applied to for his personal recollections on the subject by the biographer of Mr. Morris, says, "that, although the state of the materials, consisting of a reported draught in detail,

and subsequent resolutions accurately penned and falling easily into their proper places, was a good preparation for the symmetry and phraseology of the instrument," there was yet sufficient room for the display of taste and talent in giving "a finish to its style and arrangement;" and that "that merit fairly belongs to the pen of Mr. Morris."

The convention devoted three days to its revision, and a careful comparison of it with the original draught of the committee of detail, so far as that had been agreed to, and with the subsequent resolutions of the House. Some verbal alterations were made, and a few of substance; but the fundamental principles of the plan remained unchanged. The great issue now presented, therefore, was the acceptance or rejection of the embodied result of the deliberations of the convention as a whole.

Governor Randolph, expressing "the pain he felt at differing from the body of the convention, on the close of the great and awful subject of their labors, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments," submitted a proposition that another general convention should be called to decide on any amendments to the plan that might be offered by the several State conventions. "Should this proposition," he said, "be disregarded, it would be impossible for him to put his name to the instrument. Whether he should oppose it afterwards, he would not then decide; but he would not deprive himself of the freedom

to do so in his own State, if that course should be prescribed to him by his final judgment."

Colonel Mason seconded the proposition of his colleague. "This constitution," he said, "had been formed without the knowledge or idea of the people. A second convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, Take this or nothing. As the Constitution now stands, he could not give it his support or vote in Virginia; and he could not sign here what he could not support there."

These declarations, from quarters of so much respectability, roused Mr. Charles Pinckney, of South Carolina, to reply. "Such declarations," he said, "from members so respectable, at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations and amendments of the different States on the subject of government at large. Nothing but confusion and contrariety will spring from the experiment. The States will never agree in their plans; and the deputies to a second convention, coming together under the discordant impressions of their constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections, as well as others, to the plan. He objected to the contemptible weakness and dependence of the executive. He objected to the power of a majority only of Congress over

commerce. But, apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support."

After some remarks by Mr. Gerry, indicating his determination to withhold his signature from the Constitution, the question was taken upon the proposition of Governor Randolph, when all the States answered, No. The strong and firm convictions of General Washington, Mr. Madison, and Judge Blair, as to the extreme gravity of the crisis, and the general wisdom and safety of the remedy provided for it, where it was vain to hope for absolute perfection in any plan, and indecision and delay would be ruinous, carried the vote of Virginia, with that of the other States, in the negative. The Constitution was then ordered to be engrossed; and the House adjourned — the following day being Sunday — to Monday, the 17th of September.

On that day, immediately after the reading of the engrossed Constitution, Dr. Franklin rose, and, with his air of serene wisdom and patriarchal simplicity, addressed the convention as follows: —

"I confess," said he, "there are several parts of this Constitution which I do not at present approve; but I am not sure that I shall never approve them. For, having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions, even on important subjects, which I once thought to be right, but found to be otherwise. It

is, therefore, that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others.

"In these sentiments, I agree to this Constitution, with all its faults, if there be such; because I think a general government necessary for us, and there is no form of government but what may be a blessing to the people, if well administered; and I believe, further, that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other."

He proceeded to say, that, as in assembling another convention, there would be assembled with it the prejudices, the passions, the errors of opinion, the local interests, or selfish views of its members, he saw no reason to expect from it a better Constitution than the one now offered, which he was not sure, indeed, was not the best that could be formed. He then added: —

"Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on opinion, — on the general opinion of the goodness of the government, as well as the wisdom and integrity of the governors. I hope, therefore, that for our own sake, as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and

confirmed by the conventions), wherever our influence may extend; and turn our thoughts and endeavors to the means of having it well administered." He concluded by proposing a form of signing the Constitution, which, by simply attesting the fact of the unanimous consent of all the *States* present in the convention, would, he hoped, obviate any scruples that might arise from differences of individual opinion as to the merits of the Constitution.

At this stage of the proceedings, an incident occurred of so unusual and yet of so imposing a character, evincing the profound deference entertained by the convention for the opinions and even personal wishes of the presiding officer, that we cannot pass it by without a cursory notice. Several members had expressed the opinion that the Constitution had placed the popular representation in the lower House on too narrow a basis, by providing that "the number of representatives shall not exceed one for every forty thousand inhabitants." A motion made by Mr. Williamson, of North Carolina, seconded by Mr. Madison, and sustained with ability and earnestness by Colonel Hamilton, to increase the number of representatives by diminishing the ratio, had been rejected, a few days before, by a decisive vote. Mr. Gorham now said, if not too late, he desired to move to strike out "forty thousand," and insert thirty thousand as the ratio.

General Washington, in rising to put the question, so far departed from the reserve of his

position, as presiding officer, as to address a few simple but pregnant remarks to the convention, invoking their favorable consideration of the proposition. "Although his situation," he said, "had hitherto restrained him from offering his sentiments on questions depending in the House, and, it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of representatives had been considered by many members of the convention an insufficient security for the rights and interests of the people. He acknowledged it had always appeared to himself among the exceptionable parts of the plan; and, late as the present moment was for admitting amendments, he thought this of so much consequence that it would give him much satisfaction to see it adopted."

All opposition disappeared before this impressive appeal. The proposition was agreed to unanimously, and the amendment was made by an erasure, and substitution of thirty for forty, on the face of the enrolled parchment copy of the Constitution. The final question was then put on agreeing to the Constitution as enrolled; and all the States answered, Ay. Nothing now remained but for the members to sign. The appeal of Dr. Franklin, for unanimity in this act, was enforced by several members of the convention. Mr. Gouv-

erneur Morris said, "He, too, had objections; but, considering the present plan as the best that was to be attained, he should take it with all its faults. The majority had determined in its favor, and by that determination he should abide. The moment this plan goes forth, all other considerations will be laid aside, and the great question will be, Shall there be a national government or not? And this must take place, or a general anarchy will be the alternative."

Colonel Hamilton also expressed his anxiety that every member should sign. "No man's ideas," he said, "were more remote from the plan than his own were known to be; but is it possible to deliberate between anarchy and convulsion on one side, and the *chance* of good to be expected from the plan on the other?"

These appeals were without the desired effect. Colonel Mason, Governor Randolph, and Mr. Gerry, — the only members of the convention whose objections to the Constitution were of an uncompromising character, — remained unshaken in their determination to withhold their names from it. All the other members, on behalf of their respective States, proceeded, one after another, to affix their signatures to the instrument, in the form proposed by Dr. Franklin, — "Done in convention, by the unanimous consent of the States present, this 17th day of September, in the year of our Lord 1787, and of the Independence of the United States of America, the twelfth."

Mr. Madison relates, that, whilst the last members were signing, Dr. Franklin, looking towards the president's chair, at the back of which a rising sun happened to be painted, observed to a few members near him that painters had found it difficult to distinguish in their art a rising from a setting sun. "I have," said he, "often and often, in the course of the session, and in the vicissitudes of my hopes and fears as to the issue, looked at that behind the president, without being able to tell whether it was rising or setting. But now, at length, I have the happiness to know that it is a rising, and not a setting, sun."

Such was the closing scene — after four months of painful, laborious, and often doubtful, deliberations within, and of intense anxiety of the public mind without — of the Federal Convention of 1787; which, whether regard be had to the dignity, patriotism, and wisdom of the actors, the magnitude of the issues depending on its proceedings, or the difficulty as well as importance of the questions to be solved, has had no superior among the most renowned deliberative assemblies of any age or country.[1]

[1] A most able and eloquent British statesman, in a memorable debate in the House of Commons, six years after the formation of the Constitution of the United States, expressed in a very striking manner his sense of the supreme difficulty of the task undertaken by the convention, as well as of the signal success with which it was accomplished. With reference to the formation of a new constitution *ab origine*, he said, "If, by a peculiar interposition of Divine power, all the wisest men of every age and of every country could be collected into one assembly, he did not believe that their united wisdom would be capable of forming even a tolerable constitution, with-

out a practical example to work by." He then added: "One apparent exception might be mentioned, — the Constitution of the United States of America, — which he believed to be so excellently constructed, and to be so admirably adapted to the circumstances and situation of the inhabitants, that it left us no room to boast that our own was the sole admiration of the world. The objection, however, was only apparent. They had not a constitution to build up from the foundation; they had ours to work upon, and adapt to their own wants and purposes." — Speech of Charles James Fox, on Mr. Grey's Motion for Parliamentary Reform, in 1793.

A more careful examination would perhaps have led the distinguished speaker to the conclusion, that the framers of the Constitution of the United States were not aided in their work, to the extent he supposed, by the precedent of the British Constitution, which could furnish nothing to guide in the construction of a federative system, or in the organization of an executive and Senate that were elective, and not hereditary, as in England.

CHAPTER XXXIII.

Constitution transmitted to Congress — Attempts in that Body to embarrass its Progress made by Richard Henry Lee of Virginia, Mr. Dane of Massachusetts, and Melancthon Smith of New York, foiled by Mr. Madison — Constitution referred to Conventions of the People in the Several States — Characters of the Parties for and against it — Undergoes Public Discussion — Essays of the "Federalist." — Mr. Madison's Participation in that Work — Authentic Statement of his Contributions to it — Fifteen of the Numbers written by him, claimed for Colonel Hamilton — Analysis and General Review of his Portion of the Work — Respective Merits of Mr. Madison and Colonel Hamilton in relation to it — Different Inspirations under which they wrote — Other Contemporary Publications on the Great Question of the Day — Mr. Adams's "Defence of the Constitutions of the United States" — Character of it — Mr. Madison's Remarks on it — Reception of it by the Public — Dissent of Samuel Adams and Roger Sherman from its Leading Doctrines — Striking Criticism of it by Bishop Madison, of Virginia — Friendly Discussion of its Doctrines in Correspondence of Mr. Jefferson with the Author — Similar Correspondence between Mr. Madison and Mr. Adams, containing Mr. Madison's Exposition and Hopeful View of the *Republican* Theory of the Constitution — Proceedings of Convention of Pennsylvania, the First called to decide upon the Acceptance of the Constitution — Political Parties in that State — Vehement Contentions between them — Mr. Findley, Mr. Smilie, and Mr. Whitehill, the Leading Opponents of the Constitution in the Convention — Mr. Wilson and Chief-Justice M'Kean, its Principal Defenders — Convention decide for Ratification by Majority of Two to One — The Conventions of Delaware, New Jersey, Georgia, and Connecticut, successively ratify the Constitution; the three first by Unanimous Votes, the last by very large Majority — Honors voted to Mr. Madison by Faculty and Trustees of Princeton College, New Jersey — Letters addressed to him by Dr. Witherspoon.

As soon as the convention had put the finishing hand to the Constitution,— the result of their long and anxious labors,— they passed a resolution for laying it before Congress, then in session in the city of New York, with the expression of their opinion, that "it should be submitted to a convention of delegates, chosen in each State by the people thereof, for their assent and ratification; and that each convention, assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled." No time was lost in transmitting the Constitution, under this resolution, to Congress; and it was accompanied with a letter from the convention, signed by their president, setting forth briefly, but with clearness and dignity, the leading principles by which they had been governed in the execution of their work, the peculiar difficulties they had to encounter, and "the spirit of amity and mutual deference and concession" with which those difficulties had been met and overcome. The letter closed with these impressive remarks: —

"That the Constitution will meet the full and entire approbation of every State is not perhaps to be expected. But each will, doubtless, consider, that, had her interest alone been consulted, the consequences might have been particularly disagreeable or injurious to others. That it is liable to as few exceptions as could reasonably have been expected, we hope and believe: that it may promote the lasting welfare of that country so dear

to us all, and secure her freedom and happiness, is our most ardent wish."

It was soon apparent that the work of the convention was destined to encounter a vehement opposition in this, the first stage of its probation. Mr. Madison, who was a member of Congress, as well as of the convention, arrived in New York, from Philadelphia, on the 24th of September, for the purpose of resuming his attendance on the former body. The Constitution had then been already laid before it, and became the subject of free conversation among the members. In writing to General Washington on the 30th of the month, Mr. Madison informs him, "I found, on my arrival here, that certain ideas, unfavorable to the act of the convention, which had created difficulties in that body, had made their way into Congress. They were patronized mainly by Mr. Richard Henry Lee [of Virginia], and Mr. Nathan Dane, of Massachusetts."

The first demonstration made was an endeavor to persuade Congress, on a narrow, technical plea, that, as the Constitution framed by the convention was not simply an "alteration" of the articles of the confederation, but the substitution of an entirely new system, it would be unbecoming a body which derived its existence from those articles, to "take any agency," even by transmitting the act of the convention for the decision of the people of the States, in so radical a change. Mr. Madison reminded Congress, in answer to this appeal, that

they had recommended the convention as the means of obtaining "*a firm, national government;*" and that, in several instances, they had already shown their superiority to all merely captious objections, "and under circumstances infinitely less urgent than the present state of our affairs, if any faith were due to representations made by Congress themselves, echoed by twelve States in the Union, and confirmed by the people."[1]

The opponents of the new Constitution being foiled in this effort to intercept it on its passage to the people of the States, "an attempt," continues Mr. Madison's letter, "was made, in the next place, by Mr. Richard Henry Lee, to *amend* the act of the convention before it should go forth from Congress. He proposed a bill of rights, provision for juries in civil cases, and several other things, corresponding with the ideas of Colonel Mason. He was supported by Mr. Melancthon Smith, of New York."[2]

To the patrons of this movement, Mr. Madison replied, with great force, that the intention of the States in the call of the convention evidently was, that the plan of reform to be proposed should emanate from the convention itself, and be its own act; that, if amended, as now proposed, it would become the act of Congress, the convention being

[1] See letter of Mr. Madison to General Washington, dated 30th September, 1787, in Sparks's Washington, vol. IX. pp. 542–544.

[2] The amendments proposed by Mr. Lee may be found in Carey's Museum, vol. II. pp. 556–558.

no longer in existence to concur in the amendments; that two distinct acts would thus go forth, — one addressed to the State legislatures for their sanction under the articles of confederation, the other to conventions of the people in the several States, in pursuance of the provision contained in the new Constitution; and that "confusion and disappointment would be the least evils that would ensue" from such a scene of chaos and collision.

Mr. Madison concluded his letter to General Washington, by informing him, "These difficulties, which at one time threatened a serious division in Congress, and popular altercations, with the yeas and nays on the journals, were at length fortunately terminated by the following resolution, adopted on the 28th instant: 'Congress, having received the report of the convention lately assembled in Philadelphia, resolved *unanimously* that the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention made and provided in that case.'"

This result was, doubtless, owing in a great degree to the ability and influence of Mr. Madison himself. The unanimity of the act, which was of great importance for its effect on the public mind, was obtained by waiving any expression of approbation of the Constitution by Congress, in transmitting it for the sovereign action of the people of

the States. If the previous approval of Congress had been made a necessary condition of its submission to the people of the States, as had been earnestly contended for by Colonel Hamilton, Mr. Gerry, and a few others in the convention,[1] the hostile movement of Mr. Lee would probably have brought to nought, in the very outset, all the anxious toils of the convention.

The Constitution was now fairly launched on the great deep of popular discussion. Such a spectacle had never before been exhibited in the annals of mankind, — the people of thirteen sovereign and independent States freely and anxiously deliberating upon the acceptance or rejection of a form of government which was to unite them more closely into one political destiny, and to

[1] See Madison Debates, vol. III. pp. 1536–1540. — The motion of Colonel Hamilton there mentioned, and referred to in the text, gave rise to the following energetic protest in the convention by Mr. Wilson, of Pennsylvania: —

"The motion being seconded, it is now necessary," said Mr. Wilson, "to speak freely. He expressed in strong terms his disapprobation of the expedient proposed, particularly the suspending the plan of the convention on the approbation of Congress. He declared it to be worse than folly to rely on the concurrence of the Rhode-Island members of Congress in the plan. Maryland had voted on this floor for requiring the unanimous consent of the thirteen States to the proposed change in the Federal system. New York has not been represented for a long time past in the convention [by a quorum of her delegation]. Many individual members from other States have spoken much against the plan.

"Under these circumstances, can it be safe to make the assent of Congress necessary? After spending four or five months in the laborious and arduous task of forming a government for our country, we are ourselves, at the close, throwing up insuperable obstacles in the way of its success."

The motion of Colonel Hamilton received the vote of but a single State, Connecticut, — all the other ten States present in the convention voting against it.

influence, for good or evil, the liberties and fortunes of themselves and their posterity.

There can be no doubt that the general mass of the people throughout the Confederacy welcomed, with favorable impressions, the Constitution offered to their acceptance. They had felt, in their industrious pursuits, the evils resulting from a general relaxation of political authority, and the instability and pernicious fluctuation of the public councils. They had seen, with melancholy forebodings, the demonstrated inefficiency and the growing confusion and disorders of the Federal system; and they now received with gladness from the hands of an assembly, embracing so many illustrious characters whom they were accustomed to look up to with confidence and veneration, a plan of government that promised more of energy, consistency, and order. That this was the feeling of the great body of the people, upon the promulgation of the Constitution, is sufficiently manifested by the resolutions adopted in numerous public meetings, assembled in various parts of the Confederacy, immediately after the adjournment of the convention, to express their sentiments with regard to the Constitution.

But, on the other hand, there were in all the States classes of individuals, who approached the work of the convention with very different dispositions. Some were habitually jealous of any enlargement of the Federal authority, which they regarded in the light of a foreign jurisdiction,

and very much as they had done the authority of the mother country under the colonial *régime*. Others, admitting the urgent necessity of reform, thought every desirable object might be attained, by granting a few additional powers to Congress as organized under the articles of confederation, without giving to the Federal authority the faculty of direct action upon individuals, which, they apprehended, would lead to a subversion of the State governments, and, finally, to a consolidation of the States under one central and absorbing control. There were also those, though probably not a large number, who, after the close of the war, were opposed to a general union of the States under any modification, and would have preferred the establishment of three or more distinct confederacies. To these classes, comprehending patriotic and enlightened individuals in every part of the Confederacy, were added others, not to be confounded with them, who, debauched by schemes of paper money, tender laws, and other fraudulent expedients, looked with an evil eye upon a Constitution which proscribed, with a sentence of nullity in advance, all these inventions of a false and pernicious legislation.

Here were elements enough, when organized and combined, to constitute a most formidable opposition to the new Constitution. The press began to teem with controversial publications on the one side and the other. The city of New York, then the seat of Congress, became the centre

of the agitation; and from thence arguments and appeals were sent forth to arouse into activity the dormant prejudices and hostility which existed in that State against the work of the convention, and by its example to influence the judgment of other States.

It was under these circumstances that Colonel Hamilton and Mr. Jay conceived the plan of publishing, through the newspaper press of that city, a series of essays for the purpose of explaining and defending the Constitution against the attacks of its adversaries; and invited Mr. Madison, whose peculiar qualifications for the task both of them so well knew, to co-operate with them in the work. In the commencement, these articles were addressed to the people of New York under the signature of "a citizen" of that State: but the general interest and importance of the subject soon induced the writers to address their reflections to the people of the United States; and, after the association of Mr. Madison in the work, the signature of "a citizen of New York" was exchanged for that of *Publius*.[1] Such was the origin of a series of papers, which, growing out of and intended for a particular conjuncture, and originally communicated to the public in the ephemeral garb of newspaper contributions, have come to be recognized as one of the political *clas-*

[1] This name, Mr. Madison informs one of his correspondents, was adopted from the *prenomen* of the Roman patriot, Valerius Publicola. — Manuscript Letter to Mr. Paulding, 24th July, 1818.

sics of the age and language in which they were written, and will endure possibly even longer than the Constitution which they were intended to elucidate and defend.

Mr. Madison, in a letter written to Mr. Jefferson at Paris, a few months after the completion of the publication, thus speaks of his connection with it: —

"Colonel Carrington tells me he has sent you the first volume of the 'Federalist,' and adds the second to this conveyance. I believe I have never mentioned to you that publication. It was undertaken the last autumn by Jay, Hamilton, and myself. The proposal came from the two former. The execution was thrown, by the sickness of Jay, mostly on the two others. Though carried on in concert, the writers are not mutually responsible for *all* the ideas of each other; there being seldom time for even a perusal of the pieces, by any but the writer, before they were wanted at the press, and sometimes hardly by the writer himself."[1]

Mr. Madison always referred to his share in this great work with the modesty and reserve inherent in his nature. But as very unwarrantable attempts have been made, and are still persisted in,[2] to

[1] Letter of Mr. Madison to Mr. Jefferson, dated 10th August, 1788.

[2] See History of American Republic, by J. C. Hamilton, vol. III. 352, where Nos. 53 and 56 of the "Federalist," written by Mr. Madison, are specifically claimed for Colonel Hamilton; and idem, p. 371, where it is alleged, that, of the whole eighty-five numbers, Colonel Hamilton wrote sixty-five, leaving fourteen or fifteen to Mr. Madison, and five or six to Mr. Jay.

depreciate his contributions to it, as well in regard to their value as their amount, it becomes necessary to present the truth of facts with respect to both. On the foundation of a brief and hurried memorandum, said to have been left by Colonel Hamilton in the law-office of a friend, on the eve of the fatal duel which terminated his life, his exclusive admirers have attributed to him the sole authorship of sixty-three out of the eighty-five essays which formed the collection, — allowing to Mr. Madison fourteen only, to Mr. Jay five, and setting down three as the joint production of Colonel Hamilton and Mr. Madison.

An edition of the work was published, under these auspices, in New York, in 1810, which undertook to assign specifically to each of the three authors the essays respectively written by them. In this distribution, fifteen essays, actually written by Mr. Madison, were claimed for Colonel Hamilton; and one of the five contributed by Mr. Jay (No. 64) was also appropriated to the lion's share.

A new and more correct edition of the work, being called for, was published in the city of Washington, in 1818, from a copy of the original edition of 1788, preserved by Mr. Madison, in which he had noted at the time the names of the authors in connection with their contributions, as he knew them to have proceeded from the hands of the writer to the press.[1] From this

[1] The circumstances here referred to, as guaranteeing the authenticity of this edition, are contemporaneous with the original

corrected edition, now recognized by the public as the standard edition, it appears that Mr. Madison wrote twenty-nine of the essays, instead of fourteen; and those of a character of special importance from the nature of the questions treated, as well as from the ability shown in their discussion.

A rapid glance at the subjects of his contributions, with a brief analysis of the general arrangement of the work, will not be without interest to the reader. In the plan of the work agreed on, and announced in the introductory number, it was proposed to discuss in succession the following topics: — The utility of the Union; the inefficiency of the existing confederation; the necessity of a government at least equally energetic with the one proposed; the conformity of the proposed Constitution to the true principles of republican government; its analogy to the State constitutions; and, lastly, the additional security it will give to liberty and property.

The three first topics, however interesting in themselves, were evidently but preliminaries to the

publication of the work, and occurred long before any controversy had arisen respecting the authorship of the several papers. Shortly after they were first collected and published in book-form in 1788, Mr. Madison gave copies to several of his friends; and, at their request, noted, in the copies presented, the names of the different authors in connection with their respective contributions. The notation in all these copies, and in that preserved by himself, was exactly the same, and founded on his personal knowledge at the time.

It is only necessary to add, that, after the publication of the edition of 1818, Mr. Madison repeatedly, in his correspondence and otherwise, recognized its correctness, as conforming to the evidence and materials which had been derived from his files.

main question embraced under the fourth head, — the structure and merits of the proposed Constitution itself. To this head, involving the immediate issue to be decided by the people of the States, no less than forty-eight consecutive numbers of the publication — beginning with the thirty-seventh — were devoted; and, of these forty-eight numbers, Mr. Madison contributed twenty-four, Colonel Hamilton twenty-three, and Mr. Jay one. In the review of the Constitution thus undertaken, the legislative department, — the controlling one in every free government, — with the various difficult and complex questions it presented, was treated almost exclusively by the pen of Mr. Madison. At that stage of the work, he was called to Virginia to prepare for the elections to the State convention;[1] and the remaining part of the programme was executed by Colonel Hamilton.

The contributions of Mr. Madison under the three preliminary heads, although not so numerous, are distinguished by a remarkable variety, as well as the highest degree, of excellence. The tenth number, on the safeguard against domestic faction afforded by the Union, exhibits a power of analysis, and a depth and clearness of abstract reasoning, which have commanded the admiration of every intelligent reader. The fourteenth number, in answer to the old dogma of the incompatibility of an extensive territory with republican

[1] Mr. Madison left New York, for Virginia, on the 4th of March, 1788.

institutions, is a lucid and victorious refutation of a once-accredited error, in a glowing and flexible style, which leaves the reader at a loss which most to admire, the eloquence or the logic.[1] And the

[1] The friends of Colonel Hamilton have claimed for him a great superiority as a writer over Mr. Madison, whose style they criticise as stiff, harsh, and obscure. [Walsh's American Review for April and July, 1811.] It so happens, that both of them, in different numbers of the "Federalist," have treated the same topic, and one well calculated to elicit their powers of expression, — the alleged degeneracy of Americans, in moral and intellectual attributes, from their European progenitors. We annex in parallel columns, for the study of those who may be curious in such matters, the following passages from their respective numbers relating to this sensitive topic, leaving to the reader to decide for himself on which side lies the advantage in taste, elegance, and purity of diction: —

Colonel Hamilton, 11*th No. of the "Federalist."*

"I shall briefly observe that our situation invites, and our interests prompt us, to aim at an ascendant in the system of American affairs. The world may politically, as well as geographically, be divided into four parts, each having a distinct set of interests. Unhappily for the other three, Europe, by her arms and by her negociations, by force and by fraud, has in different degrees extended her dominion over them all. Africa, Asia, and America have successively felt her domination. The superiority she has long maintained has tempted her to plume herself as the mistress of the world, and to consider the rest of mankind as created for her benefit. Men, admired as profound philosophers, have in direct terms attributed to her inhabitants a physical superiority, and have gravely asserted that all animals, and with them the human species, degenerate in America; that even dogs cease to bark, after having breathed awhile in our atmosphere. Facts have too long supported the arrogant preten-

Mr. Madison, 14*th No. of the "Federalist."*

"But why is the experiment of an extended Republic to be rejected, merely because it may comprise what is new? Is it not the glory of the people of America, that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience? To this manly spirit posterity will be indebted for the possession, and the world for the example, of the numerous improvements displayed on the American theatre in favor of private rights and public happiness. Had no important step been taken by the leaders of the Revolution for which a precedent could not be discovered; no government established of which an exact model did not present itself, — the people of the United States might, at this moment, have been numbered among the melancholy victims of misguided counsels;

three successive numbers (18th, 19th, and 20th), in which he illustrates, by historical examples, the tendency of all mere confederacies to separation and anarchy in the members, rather than consolidation and successful tyranny in the head, apply the clue of philosophical induction to the mazes of history with a beauty, justness, and skill, to which it would be difficult to find a parallel in the whole range of political literature.

In that division of the work which was more peculiarly his own, he had occasion not only to develop all the leading principles of the Constitution, but to discuss the various questions which lie at the foundation of free government itself. In entering upon it, he remarks: "That as the ultimate object of these papers is to determine clearly

sions of the European: it belongs to us to vindicate the honor of the human race, and to teach that assuming brother moderation. Union will enable us to do it. Disunion will add another victim to his triumphs. Let Americans disdain to be the instruments of European greatness. Let the thirteen States, bound together in a strict and indissoluble Union, concur in erecting one great American system, superior to the control of all transatlantic force or influence, and able to dictate the terms of the connection between the old and the new world."

must, at best, have been laboring under the weight of some of those forms which have crushed the liberties of the rest of mankind. Happily for America, — happily, we trust, for the whole human race, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of government, which have no model on the face of the globe. They formed the design of a great Confederacy, which it is incumbent on their successors to improve and perpetuate. If their works betray imperfections, we wonder at the fewness of them. If they erred most in the structure of the Union, this was the work the most difficult to be executed; this is the work which has been new-modelled by the act of your convention; and it is that act on which you are now to deliberate and decide."

and fully the merits of the Constitution, and the expediency of adopting it, our plan cannot be completed without taking a more critical and thorough survey of the work of the convention; without examining it on all sides, comparing it in all its parts, and calculating its probable effects." [1]

The discussion was introduced by a striking review of the difficulties which must have been experienced by the convention in the formation of a proper plan. The great and arduous problem to be accomplished was set forth in the following terms: —

"Among the difficulties encountered by the convention, a very important one must have lain in combining the requisite stability and energy in government, with the inviolable attention due to liberty and the republican form. Without substantially accomplishing this part of their undertaking, they would have very imperfectly fulfilled the object of their appointment or the expectation of the public. Yet that it could not be easily accomplished, will be denied by no one who is unwilling to betray his ignorance of the subject. Energy in government is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws, which enter into the very definition of good government. Stability in government is essential to national character, and the advantages annexed to it, as well as to that repose and confidence in the minds of the people which

[1] No. 37 of the "Federalist."

are among the chief blessings of civil society. . . . On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once the difficulty of mingling them in their due proportions."

After two chapters[1] devoted to the consideration of the difficulties encountered by the convention in the execution of their task, and the incoherence of the objections brought forward by the adversaries of the Constitution, he proceeds to the primary question, whether the plan proposed be in strict conformity to republican principles. "The first question that offers itself," he observes, "is, whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America, with the fundamental principles of the Revolution, or with the honorable determination which animates every votary of freedom to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible."[2]

To that test he fearlessly brings the Constitution; defining a republican government — a phrase so loosely employed by many political writers as to mean any thing, every thing, or nothing — to be a government of which all the departments derive their existence "directly or indirectly from the

[1] Nos. 37 and 38. [2] No. 39.

great body of the people," and are ultimately responsible to them. After establishing the republican character of the Constitution by this fundamental test, he examines the proposed government in other relations, and shows that it is not wholly National, as alleged by its adversaries, nor yet wholly Federal, but a unique and compound system combining many important Federal features with the distinguishing National attribute of a direct operation on individuals. In connection with this topic, he examines the objection which had been much urged that the convention exceeded their powers by proposing a new system in lieu of a mere "alteration," or amendment of the old one. He enforces his answer to this objection by referring to the critical and disorganized condition of the country under the articles of confederation, the wide-spread anxiety it had occasioned, and the supreme law of the public safety; and concludes with the following eloquent remarks on the folly of listening, in such circumstances, to mere technical scruples about idle matters of form: —

"Had the convention, under all these impressions, and in the midst of all these considerations, instead of exercising a manly confidence in their country, by whose confidence they had been so peculiarly distinguished, and of pointing out a system capable in their judgment of securing its happiness, taken the cold and sullen resolution of disappointing its ardent hopes, of sacrificing substance to form, of committing the dearest inter-

ests of their country to the uncertainties of delay and the hazard of events, — let me ask the man who can raise his mind to one elevated conception, who can awaken in his bosom one patriotic emotion, what judgment ought to be pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on the conduct and character of this assembly? Or, if there be a man whose propensity to condemn is susceptible of no control, let me ask what sentence he has in reserve for the twelve States who *usurped* the power of sending deputies to the convention, a body utterly unknown to their constitutions; for Congress, who recommended the appointment of this body, equally unknown to the confederation; and for the State of New York in particular, who first urged and then complied with this interposition?"[1]

He then proceeds to a general survey of the powers proposed to be vested in the Union. "The Constitution proposed by the convention," he says, "may be considered under two general points of view. The *first* relates to the sum or quantity of power which it vests in the government, including the restraint it imposes on the States; the *second*, to the particular structure of the government, and the distribution of the power among its several branches. Under the first view of the subject, two important questions arise: 1. Whether any part of the powers transferred to the general government be unnecessary or improper? 2. Whether

[1] No. 40.

the entire mass of them be dangerous to the portion of jurisdiction left in the several States?"[1]

Four numbers[2] are devoted to the consideration of the first question under a distinct classification of the powers, positive or negative, proposed to be vested in the Union, as they relate to the following objects of common concern: Security against foreign danger; regulation of foreign intercourse; maintenance of harmony and proper intercourse among the several States; miscellaneous objects of general utility; restraints of the States from certain injurious acts; and, finally, provisions for giving due efficacy to all these powers. In this connection, all the powers proposed to be delegated to the general government, or prohibited to the States, are successively reviewed; and the reasons and grounds of each lucidly stated and impressively enforced.

Two chapters[3] of singular power, and replete with political wisdom, are then devoted to the inquiry, How far the whole mass of power, proposed to be vested in the Union, would endanger the existence or security of the State governments. It is shown by a minute analysis of all the various sources of real and ultimate strength in a government, both moral and physical, that, in a serious conflict between the Federal and the State governments, the decided advantage would be with the latter; and that "all those alarms which have

[1] No. 41.

[2] Nos. 41, 42, 43, and 44.

[3] Nos. 45 and 46.

been sounded of a meditated and consequential annihilation of the State governments must, on the most favorable interpretation, be ascribed to the chimerical fears of their authors."

Mr. Madison is then brought, in the programme of his discussion, to the consideration of the general structure of the government, or the distribution of the total mass of delegated power among its organized branches. Here he meets, in the outset, an objection which had been much dwelt upon by all the opponents of the Constitution, — that, in various provisions, it had blended together the functions of the different departments of government, legislative, executive, and judicial, and thus violated a fundamental maxim of free government, which requires their separation. This leads him to a profound discussion, on both principle and example, of the true meaning and necessary qualifications of the maxim referred to, and the means of giving effect to it in practice, in the course of which he develops, in the most luminous and comprehensive manner, the whole complex economy of a well-balanced Constitution.[1]

Five numbers are given to this important discussion; and he then enters in detail, through a long series of papers, on the structure of the legislative department. The organization of the popular branch he treats under the following heads: The qualifications of the electors and elected; the term of service of the members; the ratio

[1] See Nos. 47, 48, 49, 50, and 51.

of representation; the total number of the body; the alleged tendency of the plan to the elevation of the few at the expense of the many; and the future augmentation of the number of representatives. These topics carry him through a wide field of disquisition, in which he treats thoroughly many of the most interesting questions connected with the theory and practice of representative institutions.[1]

The constitution of the Senate, as a branch of the legislature, is finally examined in all its relations, and particularly with reference to the qualifications required in the members; their appointment by the State legislatures; the equal representation of the States in that body; the number of members; and the duration of their terms of service. Under the two last heads, the vital necessity of a senatorial body in a republican government, and the important ends to be answered by its institution, are clearly pointed out and conclusively established. Nowhere can be found a more beautiful, instructive, or profound delineation of the true genius and spirit of a republican system, as contradistinguished from the laxity and license of an unbalanced democracy.[2]

[1] See Nos. 52, 53, 54, 55, 56, 57, and 58.

[2] See Nos. 62 and 63.

We cannot forbear to give here the following passage from the last of Mr. Madison's papers in the "Federalist," as a closing specimen of the sober wisdom and philosophy, clothed in a garb of the chastest diction, which ennobled all his contributions to that work: —

"Thus far I have considered the circumstances which point out the necessity of a well-constructed Senate, as they relate to the *representatives* of the people. To a people

It will be seen from this general review of Mr. Madison's contributions to the "Federalist," and the class of subjects treated of by him, that he had his full share in stamping upon the work that character of wisdom, originality, and depth, which is universally accorded to it, not only as a commentary on the Constitution, but as a dissertation on the principles of free government. Mr. Jefferson, in writing to Mr. Madison from Paris, on the 18th of November, 1788, pronounced it "the best commentary on the principles of government which was ever written."[1] Chancellor Kent, in his great work on American law, speaks of it in these notable terms: "I know not, indeed, of any work on the principles of free government

as little blinded by prejudice or corrupted by flattery as those whom I address, I shall not scruple to add that such an institution may sometimes be necessary as a defence to the *people themselves* against their own temporary errors and delusions. As the cool and deliberate sense of the community ought in all governments, and actually will in all free governments, ultimately prevail over the views of their rulers; so there are particular moments in public affairs when the people, stimulated by some irregular passion or by some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will be afterwards the most ready to lament and condemn

"In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind? What bitter anguish would not the people of Athens have often escaped, if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day, and statues on the next."

[1] See Jefferson's Writings (Randolphs's edition), vol. II. p. 382.

that is to be compared, in instruction and intrinsic value, to the small and unpretending volume of the 'Federalist;' not even if we resort to Aristotle, Cicero, Machiavel, Montesquieu, Milton, Locke, or Burke. It is equally admirable in the depth of its wisdom, the comprehensiveness of its views, the sagacity of its reflections, and the fearlessness, candor, simplicity, and elegance, with which its truths are uttered and recommended."[1]

It was made by Judge Story the basis of his elaborate and systematic treatise on the Constitution. He styles it "an incomparable commentary," and places it in the same category, even as to authority, with the decisions of the supreme court on questions of constitutional law.[2] To the value of Mr. Madison's contributions to it, the learned judge bears the highest practical testimony, in the numerous textual citations from them which he introduces into the body of his own commentaries. Leaving out the judicial department of the Constitution, which was in some sort the professional domain of Colonel Hamilton, the attentive reader will not fail to observe that this leading treatise on the Constitution recurs far more frequently, for the illustration of its principles, to the numbers of the "Federalist" written by Mr. Madison, than to those of either of the other distinguished contributors. And it is a circumstance not unworthy of remark in this same connection,

[1] Kent's Commentaries on American Law, vol. i. p. 241.

[2] Preface to Story's Commentaries on the Constitution.

that, in the only instance in which Chancellor Kent, in his great work, makes special and distinctive mention of particular numbers of the "Federalist," — those, to wit, from No. 52 to No. 64, which he describes as containing "a profound discussion"[1] of the principles on which the organization of the two Houses of Congress rested, — of the fourteen numbers there referred to, nine were written by Mr. Madison, three by Colonel Hamilton, and one by Mr. Jay.[2]

[1] See Kent's Commentaries, vol. I. p. 241.

[2] The statements in the text which might otherwise seem invidious have been rendered necessary by the systematic and persevering efforts of a certain class of political writers, idolatrously devoted to the principles or person of Colonel Hamilton, to depreciate the merit and importance of Mr. Madison's contributions to the "Federalist," in order to swell thereby the relative merits and fame of their favorite leader. The extent to which this spirit of adulation has been carried would be ludicrous, but for the arrogance and injustice towards others which accompanied it. In a review, published many years ago, of the works of Colonel Hamilton, including under the generality of that title the entire collection of the papers of the "Federalist," the reviewer — evidently a writer of ability, but whose critical discrimination, with his sense of justice, was merged in the strength of his political prejudices — remarks that it is quite *superfluous* to prefix to the several papers in the collection the names of the writers; that "the gigantic intellect" of Colonel Hamilton leaves unmistakable traces; that, guided by the internal evidence alone, it is easier to identify his contributions in the "Federalist," than to distinguish the papers of Addison, the prince of essayists, from those of Steele and Budgell, in the "Spectator;" and he then proceeds to comment, with unbounded admiration, upon certain numbers of the "Federalist" as the offspring of Colonel Hamilton's towering superiority of genius, which are now known to have been the productions of Mr. Madison's pen. [Walsh's American Review for April and July, 1811.] But this was before the revelations of 1818 had settled, to every candid mind, the true authorship of the different numbers of the "Federalist." What shall be said in extenuation of the prejudice and injustice which, in despite of the light of knowledge, still persists in adhering to the same errors and repeating the same extravagances?

We would be the last to derogate from the just merit of Colonel Hamilton in the distinguished part he bore in this master work of American genius and political science. That merit was far too great to admit any palliation or excuse for the effort made to magnify it at the expense of justice to his associates. In urging the adoption of the Constitution by the people, as he did, through the "Federalist," with extraordinary earnestness and vigor, he was often, it is true, in developing the principles of the system, the advocate of opinions not his own.[1] He had declared in the

[1] The inauspicious effect of this false position was manifested very soon after the adoption of the Constitution, when Colonel Hamilton was called to take part in the practical administration of the government. Among the considerations most dwelt upon by the writers of the "Federalist" to recommend the Constitution to the favor and confidence of the people, was the doctrine, that "the State governments would, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority." This was the language of Colonel Hamilton himself, who laid down the principle "as an axiom in our political system." ["Federalist," No. 28.] In pursuance of this axiom, he, in another place (No. 26), expressly assigns to the "State legislatures" the office of vigilant "guardians of the rights of the citizens against encroachments of the general government," — guardians who would be ready "to *sound the alarm* to the people, and not only be the *voice*, but if necessary the *arm*, of their discontent." And yet, notwithstanding these repeated inculcations of Colonel Hamilton in the "Federalist," when a favorite measure of his own administration of the treasury — the assumption of the State debts — gave rise to remonstrances of the legislature of Virginia in 1790, he enclosed their resolutions to Mr. Jay, then Chief Justice, with these ominous remarks, ignoring and revoking all his teachings through the "Federalist:" —

"This is the first symptom of a spirit which must either be killed or will kill the Constitution. I send the resolutions to you that it may be considered what ought to be done. Ought not the collective weight of the different parts of the government to be employed in exploding the principles which they contain?" — See the letter in Jay's Life, vol. II. pp. 202, 203.

convention, as we have seen, that "no man's ideas were more remote from the plan than his own were known to be; but it was not possible to deliberate between anarchy and convulsion on the one side, and the *chance* of good to be expected from the plan on the other." The result was, that he threw himself into the struggle for its adoption with all the energy of his character and the vigor of his intellect; and both were displayed in his contributions to the "Federalist" in a bold and striking manner, and with admirable skill and power.

But he was still an advocate. He wrote and spoke, not from his own point of view, but from that of others. The position of Mr. Madison was different. He had been the chief architect in the formation of the Constitution. He was familiar with all the counsels that shaped and controlled every part of its mechanism. He was an earnest believer in the republican theory of government, which Colonel Hamilton was not. From Mr. Madison, therefore, besides his own important contributions, proceeded the ruling inspiration which gave tone and color to the discussions of the "Federalist." The correspondence of Colonel Hamilton himself bears testimony to this. It shows, that, even after Mr. Madison was called away from a personal participation in the work by the necessity of his presence in Virginia, his solicitude watched over it; and he wrote to Colonel Hamilton, making suggestions, with regard to the portion

that remained to be executed, which were cordially accepted and acted upon by the latter.[1]

The constitutional discussions of the day gave birth to another American work on the science of government, which, considering the elevated rank of the author as well as the peculiar political system it developed, cannot be passed by without notice in any sketch, however general, of the political history of the times. It was entitled, "A Defence of the Constitutions of the United States of America," by Mr. John Adams, then minister of the United States at the court of London; and although professedly a defence of the State constitutions only, against a stale dogma of the French philosophers inculcating the "collection of all authority in one centre," it was evidently intended to

[1] See the letter of Colonel Hamilton to Mr. Madison, 3d April, 1788 (Hamilton's Works, vol. i. p. 450), in which he says: —

"I have been very delinquent, my dear sir, in not thanking you for your letter from Philadelphia. The remarks you made on a certain subject are important, and will be attended to. There is truly much embarrassment in the case. I think, however, the principles we have talked of are not only just, but will apply to the other departments."

We have not the letter of Mr. Madison here referred to; but the subject of it is sufficiently indicated by the tenor of Colonel Hamilton's own letter. It doubtless related to the view to be presented of two questions of great difficulty and importance connected with the judiciary department of the new government, — the amenability of the States to the suit of individuals before the Federal tribunals, and the general concurrent jurisdiction of the State with the Federal courts in questions arising under the Constitution and laws of the Union. Those questions are treated by Colonel Hamilton in the 81st and 82d Nos. of the "Federalist," where it will be seen, that, with regard to the first, the suability of the States by individuals is denied; and, respecting the second, the concurrent jurisdiction of the State courts is contended for upon the general principles of the Constitution.

exert an influence on the pending question of the new Constitution proposed for the Union. It consisted of three volumes, the first of which was published in London early in the year 1787, and was soon afterwards reprinted in America. The other two volumes came out successively in the latter part of the year 1787, and the early part of the year 1788.

Mr. Madison, in a letter written to Mr. Jefferson on the 6th of June, 1787, — a short time after the assembling of the convention in Philadelphia, — thus speaks of the appearance and political tendencies of the work: —

"Mr. Adams's book, which has been in your hands of course, has excited a good deal of attention. An edition has come out here [Philadelphia], and another is in the press at New York. It will probably be much read, particularly in the Eastern States, and contribute, with other circumstances, to revive the predilections of this country for the British Constitution. Men of learning find nothing new in it; men of taste, many things to criticise; men without either, not a few things they will not understand. It will, nevertheless, be read and praised, and become a powerful engine in forming the public opinion. The name and character of the author, with the critical situation of our affairs, naturally account for such an effect. The book, also, has merit; and I wish many of the remarks in it, which are unfriendly to republicanism, may not receive fresh weight from the operations of our governments."

The whole drift of Mr. Adams's political speculations, as Mr. Madison plainly saw, was to bring the institutions of America to the nearest possible resemblance to the British form of government, which the author eulogized "as the most stupendous fabric of human invention for the preservation of the balance of power and the prevention of its vibrations." But, unfortunately for his purpose, the existing constitution of society in America afforded no materials for such a system. The political organization of every country must be in harmony with its social structure, or it cannot stand. To get over this difficulty, Mr. Adams endeavors to show, that nature ordains, in every society, three "orders" or estates, — the one, the few, and the many; and that all these orders must have their separate and distinct organs in the government to produce and maintain a proper equilibrium. "Without three orders and an effectual balance between them in every American Constitution, it must," he says, "be destined to frequent, unavoidable revolutions."[1]

For the inauguration of these orders in America, he begins with what he calls a natural aristocracy, "common to every people," founded on fortune, birth, or distinguished personal merit, or all three of them united. This natural aristocracy, unless "judiciously managed in the Constitution," he describes to be a body of men "the most dangerous to the Commonwealth." His mode of

[1] See Preface to "Defence," &c., p. VIII.

managing them is to put them, or the most remarkable of them, into one assembly by themselves; to erect a first magistrate "over them," invested with the whole executive authority, a peremptory negative on the acts of the legislature, and the absolute disposal of the public patronage; and to erect, "on the other side of them," a House of Commons, representing the body of the people.[1] Thus it is that Mr. Adams transplants from the Old World into the virgin soil of America the three estates of the one, the few, and the many, and erects upon them his favorite scheme of government.

His system did not find the acceptance which Mr. Madison apprehended. It found two or three congenial minds, as we have seen, in the Federal Convention, and made a certain number of proselytes in that section of the Confederacy with which he was particularly identified by the ties of nativity and early personal associations. But even there — in his own household — it met a firm and manly protest from two of his earliest and most intimate friends, Samuel Adams and Roger Sherman, who had trod with him the thorny paths of the Revolution.[2] In every other part of the Confederacy, it either fell still-born on the public mind, or excited in it a lively revulsion.[3]

[1] See idem, vol. I. pp. 109–117, 139, 140, and 183. The same ideas were developed in his correspondence referred to below.

[2] See the correspondence of Mr. Adams with these two venerable patriots in 1789 and 1790 — sustained, on their part, with a noble and inflexible fidelity to republican principles — in Works of John Adams, vol. VI. pp. 411–442.

[3] As a specimen of the earnest dissent which the political system

The attempt to enlist republican jealousies in favor of a strong executive power, by holding up

developed in Mr. Adams's book met with from some of the calmest and most enlightened minds of America, we subjoin the following extracts of a letter addressed to Mr. Madison, under date of the 11th June, 1787, by his able and learned kinsman, Dr. Madison, President and Professor of Moral and Political Philosophy in the College of William and Mary, Virginia: —

"Is it possible that all this trouble was taken, and show of learning displayed, merely to refute the opinion of Monsieur Turgot? — an opinion sufficiently innocent in itself, and which had no, or very few, advocates in America, if we may judge from the governments that have been established. Mr. Adams is very much 'mortified' that our executives have not an absolute negative upon the legislatures; and thinks the British Government, beyond comparison, the wisest and best ever yet invented. He must wish, then, to introduce a similar government in America. . . Jefferson thanks his God that the days of kings, nobles, and priests are almost past. Mr. Adams must trust in his, that they will be seen to rise in America with new splendor. Which sentiment is most worthy of a man of common sense, — I will not say political knowledge, — we need not determine.

"There is one circumstance of much importance which these admirers of the British Government seem entirely to forget. There did exist in that country, and indeed throughout ancient and modern Europe, from the earliest periods, the race of men called nobles. They became so firmly established, either through power or prejudice, that to eradicate them was impossible; so that, in settling the British Government, the only question could be, How shall we moderate the evil as much as possible? It could not be removed; and therefore it was wise to adopt a system by which the least possible injury should be sustained from it. Perhaps the British Government may be considered as having fortunately adopted that which would best temper an evil inseparable from the nation.

"Fortunate as we are in knowing no distinction among men but such as nature has established; singularly fortunate, indeed, in being free from the most absurd and degrading differences among citizens, — differences which ignorance and poverty gave birth to, and which nothing but folly or pride would now introduce, — I trust the patriots of America will ever evince to their country and the world, not only the resolution to maintain our present forms of government pure as they originated, but that they will discover the means of giving them that energy which a government of law requires, and that permanence which, if possible, may be everlasting."

the fanciful terrors of an encroaching natural aristocracy, resting upon nothing but its moral attributes, proved a signal abortion. Even if there were any rational ground for those alarms, it seemed an odd mode of guarding against the danger of aristocratical encroachment, to organize the aristocrats into a distinct and separate power in the State. "To give them power," said Mr. Jefferson, in a friendly correspondence at a subsequent period with Mr. Adams, "in order to prevent them from doing mischief, is arming them for it, and increasing instead of remedying the evil."[1]

But in this amicable discussion between the two rival party chieftains, now restored to the cordiality of their early union in the cause of independence, the great republican leader took yet higher and nobler ground.

"I agree with you," he said, "that there is a natural aristocracy among men. The grounds of this are virtue and talents. . . . There is also an artificial aristocracy, founded on wealth and birth, without either virtue or talents; for, with these, it would belong to the first class. The natural aristocracy, I consider as the most precious gift of nature for the instruction, the trusts, and government of society. And, indeed, it would have been inconsistent in the Creator to have formed man for the social state, and not to have provided virtue and wisdom enough to manage the concerns of the

[1] See letter to Mr. Adams, of 28th October, 1813, in Jefferson's Writings, vol. IV. p. 227.

society. May we not even say that that form of government is the best which provides the most effectually for a pure selection of these ἄριστοι into the offices of government?" [1]

It was certainly a bold experiment on the part of Mr. Adams to inculcate all this distrust of a natural aristocracy, while he was laboring to build up an overshadowing single executive, armed with an absolute negative on the acts of the legislature, with the dangerous prerogative of peace and war, and the sole disposal of all places of honor or emolument under the government, without the concurrence of any other department; for all these regal powers he held it indispensable to vest in the executive head to maintain the balance of the Con-

[1] A century and a half before Mr. Jefferson, a great republican genius of England, Harrington, had spoken of the natural aristocracy of a free commonwealth in the same noble strain of manly confidence and conscious dignity. "Wherefore," he says, "this can be no other than a natural aristocracy, diffused by God throughout the whole body of mankind to this end and purpose, and such as the people have not only a natural but positive obligation to make use of as their guides; as where the people of Israel are commanded, 'Take you wise men and understanding, and known among your tribes, and I will make them rulers over you.'" — Oceana, p. 47.

In another passage of his great work, he uses this graphic language: "An army may as well consist of soldiers without officers, or officers without soldiers, as a commonwealth — especially such a one as is capable of greatness — of a people without a gentry, or a gentry without a people. . . . There is something, first in the making of a commonwealth, then in the governing of it, and, last of all, in the leading of its armies, which [though there be great divines, great lawyers, great men in all professions] seems to be peculiar only to the genius of a gentleman. For so it is in the universal series of story, if any man has founded a commonwealth, he was first a gentleman" [Oceana, p. 56], — of which he proceeds to give memorable examples from both sacred and secular history.

stitution.[1] He had no faith in any system of checks and balances, but that which he saw exemplified in the British Constitution between its three estates of King, Lords, and Commons. In a letter to Mr. Madison,[2] written thirty years after the period of which we are now treating, he still fondly recurred to his tripartite theory of government, compounded of monarchy, aristocracy, and democracy; to which Mr. Madison firmly but quietly opposed the theory of the Constitution. The following extract from the reply of Mr. Madison, dated the 22d of May, 1817, will best explain the constitutional views on this point of himself and his colleagues of the convention, while it renders a graceful tribute to Mr. Adams's book, so far as the refutation of the dogma of the French political philosophers was concerned: —

"The idea of a government 'in one centre,' as expressed and espoused by this philosopher and his theoretic associates, seems now to be everywhere exploded; and the views which you have given of its fallacy will be a powerful obstacle to its revival anywhere. . . . The great question now to be decided, and it is one in which humanity is more deeply interested than any political experiment yet made, is whether checks and balances, sufficient for the purposes of order, justice, and the public good, may not be created by a

[1] See, in addition to the passages before quoted from the "Defence," &c., Mr. Adams's letter of the 17th of July, 1789, to Mr. Sherman, in Works of John Adams, vol. VI. pp. 428 and 430.

[2] See this letter in Works of John Adams, vol. X. pp. 256–258.

proper division and distribution of power among different bodies differently constituted, but all deriving their existence from the elective principle, and bound to fidelity by the responsible tenure of their trusts. The experiment is favored by the extent of our country, which prevents the sudden contagion of evil passions; and by the combination of the Federal with local systems of government, which multiply the divisions of power, and the mutual checks by which it is to be kept in its proper limits and directions. In aid of these considerations, much is to be hoped from the force of opinion and habit, as these ally themselves with our political institutions."

We must now return to the general course of our narrative, and see what advance the Constitution has been making before the people of the several States, amid the thorough and searching investigations, on the one side and the other, which it was undergoing. The first State in which a convention was called to consider the new Constitution, and decide upon its acceptance or rejection, was the great central commonwealth of Pennsylvania. That State had been agitated, for many years, by warm domestic divisions, growing mainly out of its organic institutions. It was one of the few States in America in which the experiment had been made of the idea, so much patronized by Turgot, Condorcet, and others, of a single legislative assembly, or a government "in one centre." The experiment proved there, as it has done elsewhere,

the fruitful parent of civil and political abuses,—breaches of the public faith, invasions of the rights of property, and all the despotism of unrestrained power.

Out of these circumstances naturally arose a party, consisting of the sounder elements of society, which earnestly demanded reform in the interior economy of the State, by substituting the checks and balances of a well-constituted republic for the license of a centralized democracy. By this party, as by the body of sober-minded citizens in Pennsylvania, the new Federal Constitution was received with cordial approbation. To the partisans of the existing *régime* it was exceedingly distasteful, as foreshadowing the early and inevitable downfall of their own vicious system of State polity.[1] The legislature of the State was in session, when Congress passed their resolution for submitting the proposed Constitution to the decision of a convention, to be called in each State under the auspices of the respective legislatures. A proposition was immediately introduced and adopted in the legislative Assembly for calling a convention of the people of Pennsylvania to deliberate upon the acceptance of the new Constitution. But the necessary details for carrying the resolution into effect were postponed to the evening session of the same day.

When the hour of meeting in the evening ar-

[1] These fears were soon realized; for, in the first year after the organization of the new Federal government, the people of Pennsylvania adopted a new and reformed State constitution.

rived, it was found that there was not a sufficient number of members present to form a quorum. The members opposed to the Constitution had determined, by their concerted absence, to prevent the consummation of the resolution passed in the morning for submitting the Constitution to a convention of the people. This high-handed proceeding, on the part of a minority of the legislature, aroused an indignant feeling among many of the citizens of Philadelphia, and led to a measure no less high-handed on their part, — affording, in both instances, an instructive commentary on the inherent, anarchical tendencies of all unchecked democratic rule.

Two of the delinquent members of the legislature were seized, the following morning, by a party of the citizens, and conducted by force to their seats in the Legislative Hall; when, with the quorum thus formed, the additional resolutions for giving effect to the resolution of the preceding day were passed. The elections of delegates to the convention were recommended to take place on the first Tuesday of November, and the convention was to assemble in Philadelphia on the third Tuesday of that month.[1]

The seceding members of the legislature, who had resorted to so revolutionary an expedient for preventing the proposed call of a convention, imme-

[1] All these proceedings, with the addresses of the two adverse parties in the legislature, will be found in Carey's Museum, vol. II. pp. 362–368.

diately put forth an address to their constituents in justification of their conduct. As that address, bearing date the 29th day of September, 1787, was the first formal manifesto of opposition to the proposed Constitution, we annex the following extracts from it as indicating both the spirit and the grounds of opposition assumed, with slight variations, by the adversaries of the Constitution in all the States: —

"You will consider," they said, "whether you are in a situation to support the expense of such a government as is now offered to you, as well as the expense of your State government; — or whether a legislature consisting of three branches, neither of them chosen annually, and the Senate, the most powerful, for six years, is likely to lessen your burdens or increase your taxes; — or whether in case your State government should be annihilated, which will probably be the case, or dwindle into a mere corporation, the continental government will be competent to attend to your local concerns. You will also best determine whether the power of levying and imposing internal taxes, at pleasure, will be of real use to you or not; — or whether a continental collector, assisted by a few faithful soldiers, will be more eligible than your present collectors of taxes.

"You will also, in your deliberations on this important business, judge whether the liberty of the press may be considered as a blessing or a curse in a free government, and whether a declaration for the preservation of it is necessary; — or

whether, in a plan of government, any Declaration of Rights should be prefixed or inserted. You will be able, likewise, to determine whether, in a free government, there ought or ought not to be any provision against a standing army in time of peace; — or whether the trial by jury, in civil causes, is become dangerous, and ought to be abolished; — and whether the Judiciary of the United States is not so constructed as to absorb and destroy the judiciaries of the several States."

The convention of the State assembled in Philadelphia, as provided by the act of the legislative assembly, on the 20th of November, 1787. The spirit of opposition to the Constitution had lost nothing of its vehemence, without gaining, in any important degree, in numbers. For three weeks, every mode of assault was tried against the Constitution; but, at every point, it was triumphantly sustained. The leaders of the assault were Mr. Findley, Mr. Smilie, and Mr. Whitehill. Mr. Wilson, by the fulness of his learning, the vigor of his reasoning, and his perfect familiarity with all the preceding discussions, was the Ajax Telamon of the defence, though ably seconded by Chief Justice M'Kean and some other members of the convention.

On the 12th day of December, the debates were brought to a close; when the unconditional ratification of the Constitution by the State was declared by a vote of forty-six for, to twenty-three against it. The inexorable spirit of the opposition, however,

survived their defeat. When an appeal was made to one of their number[1] to acquiesce in the decision of the majority, and join in signing the instrument of ratification, he sternly replied "he would never allow his hand to give the lie to his heart and tongue." The whole of the party in opposition, with the exception of two, united in a published address, setting forth elaborately and with passionate zeal their objections to the Constitution,[2] the effect of which was to keep alive those sparks of local disaffection that, a few years later, burst forth in acts of overt resistance to the laws.

The State of Delaware, although her convention assembled some time after that of Pennsylvania, had already by a unanimous vote, on the 7th of December, 1787, declared her acceptance of the Constitution. On the 18th of the same month, New Jersey gave her assent to it with like unanimity;[3] and, on the 2d of January, 1788, the unanimous ratification of Georgia, in the extreme South, was added to the list. The convention of Connecticut assembled at Hartford, on the 4th day of January, 1788, and, after a session of five days only, by a large majority — one hundred and twenty-eight to forty — gave the assent of that State to the adoption of the Constitution. In all these States, the ratification was unaccompanied with propositions of amendment. We come now to

[1] Mr. Smilie.

[2] See this address in Carey's Museum, vol. II. pp. 536–553.

[3] See note at end of chapter.

States, where, parties being more nearly balanced, compromises and concessions were rendered necessary. But of these we will speak in another chapter.

NOTE.

The unanimous ratification of the Constitution by New Jersey recalls, by a natural association, the unanimous vote by which the Board of Trustees and Faculty of her chief seat of learning, headed by the venerable Witherspoon, conferred on Mr. Madison, immediately after the close of his eminent labors in the Federal Convention, the degree of Doctor of Laws. Two letters addressed, on the occasion, by the illustrious preceptor to his distinguished pupil, awaken sentiments and recollections of too deep an interest, connected with the great career of each, not to call for their insertion here. The first letter simply announced the fact of the degree being conferred in the following cordial and unaffected terms: —

"TUSCULUM, near PRINCETON, 1 October, 1787.

"DEAR SIR, — I do myself the pleasure of informing you, that the Trustees of this college, at their last meeting, have unanimously conferred on you the degree of Doctor of Laws. It seemed to give them a very particular pleasure that they had the opportunity of giving deserved honor to one of their own alumni; and I believe you will hardly doubt that none had greater pleasure in it than myself. A diploma will be made out and transmitted, as soon as it can be done in a proper manner.

"I have the honor to be, dear sir, your most obt. servant,

"Hon. JAMES MADISON. JOHN WITHERSPOON."

After an interval of some months, a second letter was written, accompanying the transmission of the diploma, in which the venerable writer indulged with more of effusion his natural feelings of pride and affection towards one who had been not only his early pupil, but his subsequent co-laborer and associate in some of the most important scenes of our public history.

"TUSCULUM, 11th August, 1788.

"SIR, — The diploma for the degree of Doctor of Laws, which the Trustees and Faculty of this college did themselves the honor of conferring on you last commencement, ought to have been sent long ago; but, as there are no printed forms for the honorary degree, we often find it difficult to get them properly executed. This occasioned a little delay, which has been protracted to a very blamable length. It now accompanies this letter; and I hope you will have no difficulty in believing that all concerned in this college were, not barely willing, but proud of the

opportunity of paying some attention to, and giving a testimony of their approbation of, one of their own sons who had done them so much honor by his public conduct. And, as it has been my peculiar happiness to know, perhaps more than any of them, your usefulness in an important station, on that and some other accounts, there was none to whom it gave more satisfaction than to, sir,

"Your most obedient humble servant,

"Hon. JAMES MADISON. J. WITHERSPOON."

CHAPTER XXXIV.

Convention of Massachusetts — Political Parties of that State — Prevailing Jealousy of Federal Power — Samuel Adams, Mr. Hancock, Nathan Dane — Letters of Mr. King and Mr. Gorham to Mr. Madison, describing Composition and Divisions of the Convention — Singular Social Contrasts exhibited in the Body — Their Influence on its Deliberations — Specimens of ultra-Democratic Jealousy and Doctrine — Constitution ably and eloquently supported by Mr. Ames, Mr. Parsons, Governor Bowdoin, and Mr. King — Friends of the Constitution resort to the Expedient of Propositions of Subsequent Amendment — Ratification finally carried by small Majority — Convention of New Hampshire meets, and adjourns without coming to a Decision — Proceedings in Maryland — Constitution vigorously opposed there by Mr. Luther Martin and Mr. Samuel Chase — Unqualified Ratification voted by large Majority of her Convention — Convention called in South Carolina — Preliminary Discussions in the Legislature — Mr. Rawlins Lowndes, the Great Adversary of the Constitution there — Answer of Mr. Charles Cotesworth Pinckney to the Objections urged against vesting in Congress Unrestricted Power of regulating Commerce — Convention ratifies Constitution by large Majority, with Recommendatory Propositions of Subsequent Amendment — Virginia, Great Battle-field of the Controversy on Adoption of the Constitution — Richard Henry Lee, George Mason, and Patrick Henry, Leaders of the Opposition to it — The late Governors, Nelson and Harrison, also opposed to it — Judge Pendleton unites with Washington, Madison, Wythe, and Blair, in Support of it — Activity and Zeal of the Opposition described by General Washington — Meeting of the Legislature — Its Sentiments at first favorable to the Constitution — Great Change effected by Personal Influence and Exertions of Mr. Henry and Colonel Mason — Conven-

tion not to meet until June of the following Year — Mr. Henry commits the Legislature to the Policy of Amendments — Anecdote in a Letter of Mr. Monroe to Mr. Madison, showing Omnipotence of Mr. Henry's Influence in the Legislature — Letter from Mr. Madison to Mr. Jefferson, then in Paris, describing in detail the State of Parties and Public Opinion in Virginia relative to the Constitution — Course of the three Great Leaders of the Opposition, Colonel Mason, Mr. Lee, and Mr. Henry — Letter of Rev. John B. Smith, President of Hampden Sidney College, giving an Account of Mr. Henry's Arguments and Exertions among the People — Position of Governor Randolph — Elections for the Convention — Solicitude of General Washington, that Mr. Madison should be a Member — Correspondence between them on the Subject — Earnest Applications to him from his County — He is elected — General Result of the Elections leaves the Issue on the Constitution in some Doubt — Second Letter of Mr. Madison to Mr. Jefferson on the State of Parties in Virginia — Geographical Classification of the Sentiments of the Different Divisions of the State — Mr. Monroe's Opinions — Successive Phases of Mr. Jefferson's Opinions on the Adoption of the Constitution — Finally declares himself warmly for its Adoption — His Letters to Mr. Carmichael, General Washington, and Mr. Rutledge.

On the 9th day of January, 1788, the convention of Massachusetts assembled in Boston to deliberate on the acceptance or rejection of the new Constitution. The rank which this State had long held in the councils of the Confederacy; her revolutionary fame; her importance in wealth and population; the influence which her example was likely to have on other States, particularly the two adjacent and doubtful States of New York and New Hampshire, — all these considerations conspired to attach a high degree of public interest and anxiety to her decision. At the same time,

very grave doubts hung over the issue of her deliberations.

Her public councils had habitually shown great jealousy of Federal power. One of her delegates to the late Federal Convention, Mr. Gerry, had refused his signature to the Constitution, and had since appealed to his constituents in a firm though temperate address, setting forth his objections to it. Another of her leading public men, Mr. Nathan Dane, had, as we have seen, met it with indications of decided hostility, on its first communication to Congress. Mr. Samuel Adams was believed to be opposed to it; Mr. Hancock, then Governor of the State, appeared lukewarm and doubting; and that large body of her population, infected or sympathizing with the spirit of the late civil commotions, was warmly arrayed against it. To breast these influences, stood, on the other hand, the bench, the bar, the clergy, the mercantile class, and the men of education and property generally, — all, more or less, the objects of democratic jealousy.

The convention was a very numerous body, consisting of near four hundred members, and forming a most motley and grotesque association of the two extremes of the social scale. We cannot give the reader a better idea of the composition and features of this extraordinary assembly than by presenting to him a portrait of it drawn by one of its members, Mr. Rufus King, in a letter written to Mr. Madison on the 27th of

January, 1788, when it had been in session more than two weeks.

"We make," he said, "but slow progress in our convention. The friends of the Constitution, who, in addition to their own weight, are respectable, as they represent a very large proportion of the good sense and property of this State, have the task not only of answering, but also of stating and bringing forward, the objections of their opponents. The opposition complain, that the lawyers, judges, clergymen, merchants, and men of education, are all in favor of the Constitution; and that, for this reason, they are able to make the worse appear the better cause. But, say they, if we had men of this description on our side, we should alarm the people with the imperfections of the Constitution, and be able to refute the defence set up in its favor.

"Notwithstanding the superiority of talents in favor of the Constitution, yet the same infatuation which prevailed, not many months since, in several counties of this State, and which emboldened them to take arms against the government, seems to have an uncontrollable authority over a numerous part of our convention. Their objections are not directed against any part of the Constitution: but their opposition seems to arise from an opinion, which is immovable, that some injury is plotted against them; that the system is the production of the rich and ambitious; that they discern its operation; that the consequence

will be the establishment of two orders in the State, — the one comprehending the opulent and great, the other the poor and illiterate. The extraordinary union, in favor of the Constitution in this State, of the wealthy and sensible part of it, is a confirmation of their opinion; and every exertion hitherto made to eradicate it has been in vain." [1]

On the side of the Constitution was, as Mr. King

[1] As the singular state of society here described by Mr. King still subsists, and retains, with its characteristic features, much of its original spirit, it will not be without instruction to contemplate some of its exhibitions in the debates of the Massachusetts Convention, as they were recorded at the time.

First, the Honorable Mr. White, we are informed, thus expressed himself: "We ought to be jealous of rulers. All the godly men we read of have failed. Nay, he would not trust a *flock of Moseses*. If we give up this section [authorizing Congress to make or alter the regulations of the *time*, *place*, and *manner* of holding elections], there is nothing left. Suppose the Congress should say that none should be electors but those worth fifty or a hundred pounds sterling, cannot they do it? Yes, said he, they can; and, if any lawyer (referring to Mr. Parsons) can beat me out of it, I will give him ten guineas."

Then Mr. Randall edified the convention with the following remarks: "It is an old saying, that *a good thing don't need praising;* but, sir, it takes the best men in the State to gloss this Constitution, which, they say, is the best that human wisdom can invent. In praise of it, we hear the reverend clergy, the judges of the supreme court, and the ablest lawyers, exerting their utmost abilities. Now, sir, suppose all this artillery turned the other way, and these great men would speak half as much against it, we might complete our business and go home in forty-eight hours."

In the same strain, the Honorable Mr. Singletary next harangued the convention: "These lawyers, and men of learning, and moneyed men, that talk so finely and gloss over matters so smoothly to make us poor, illiterate people swallow down the pill, expect to get into Congress themselves. They expect to be the managers of this Constitution, and expect to get all the power and all the money into their own hands, and then they will swallow up all us little folks like the great Leviathan, Mr. President; yes, just as the whale swallowed up Jonah."

To these denunciations of the unfortunate lawyers and judges and clergymen and men of learning, one of the chosen oracles of this party, General Thompson, added

says, an array of talents and social respectability rarely surpassed in any representative assembly. Another of Mr. Madison's correspondents[1] in the convention gave him the following imposing statistical view of the composition of this portion of the assembly: —

"To manage the cause against them [the jealous opponents of the Constitution], are the present and late governor, three judges of the supreme court, fifteen members of the Senate, twenty-four among the most respectable of the clergy, ten or twelve of the first characters at the bar, judges of

his denunciation of Washington for approving the Constitution.

"Oh, Washington!" he exclaimed, "what a name has he had! How he has immortalized himself! But he holds those in slavery who have as good a right to be free as he has. He is still for self; and, in my opinion, his character has sunk fifty per cent."

This General Thompson was prone to play the orator, and was particularly successful in apostrophizing.

"Here," the reporter says, "the general broke out into the following pathetic apostrophe: 'O my country! never give up your annual elections; young men, never give up your jewel!' He then apologized for his zeal."

One of the general's colleagues, Mr. Nason, not to be outdone in figures of rhetoric, made the following brilliant essay in the same line: —

"And here, sir, I beg the indulgence of this honorable body to permit me to make a short apostrophe to liberty. O Liberty, thou greatest good! thou fairest property! with thee I wish to live; with thee I wish to die! Pardon me if I drop a tear on the peril to which she is exposed. I cannot, sir, see this brightest of jewels tarnished; a jewel worth ten thousand worlds. And shall we part with it so soon? Oh, no!"

From these debates of the Massachusetts Convention of 1788 might be culled an anthology of radical eloquence and doctrines, which would well compare with those "choice flowers" of the primitive indoctrinations of John Ball, Jack Carter, and their companions, which Burke has brought together from the chronicles of Walsingham and Knyghton (see Appeal from the old to the new Whigs), or those model discourses that Shakespeare, the great interpreter of the annals of his country, puts into the mouth of Jack Cade and his associates.

[1] Nathaniel Gorham, Esq.

probate, high sheriffs of counties, and many other respectable people, merchants, &c., Generals Heath, Lincoln, Brooks, and others of the late army."

But all this union of intelligence and weight of character and public service was powerless against the Widgerys, the Thompsons, the Nasons, the Whites, the Singletarys, and other democratic leaders of the opposition to the Constitution. The noble eloquence of Ames, the solid argument and learning of Parsons, the mild, persuasive wisdom of Bowdoin, the lucid explanations of King, made little or no impression upon a prejudice and stolidity, which, to borrow the language of a famous English scholar and critic,[1] "baffled all arguments, and were proof against demonstration itself."

The friends of the Constitution, in their despair, at length bethought them of the expedient of propositions of amendment to accompany the ratification of the Constitution, not as conditions precedent, but to be acted upon after the adoption of the Constitution, by Congress and the State legislatures in the manner pointed out by the Constitution itself. These propositions, drawn by Mr. Parsons, were brought forward and adopted as his own by Governor Hancock, who, from his compromising course in the late popular commotions of the State, had obtained a certain degree of influence with those now most vehemently opposed to the Constitution for the Union. On the 6th day of February, 1788, after a session of four weeks, the question of ratification

[1] Bentley.

in this form was propounded to the convention, when there appeared one hundred and eighty-seven affirmative votes to one hundred and sixty-eight negative, giving a majority of nineteen only for the ratification out of a body of three hundred and fifty-five members present.

The next State that assembled in convention to consider the new Constitution was New Hampshire. Her convention met at Exeter on the 19th of February, 1788. It was soon apparent that the same spirit of opposition to the Constitution which had been manifested in Massachusetts, and proceeding in general from the same causes, was predominant in this assembly. After a week's discussion of the merits of the Constitution, the objections of a considerable number of the members were much modified, if not removed. But, as many of the members were under positive instructions from their constituents to vote against the ratification, the friends of the Constitution deemed it wise to yield to a motion of adjournment, in order to give time for informing the public mind, and inducing a reconsideration by the people of the adverse instructions which they had given. This adjournment, which was to as late a day as the third Wednesday of June, produced no small degree of discouragement to the friends of the proposed system in other parts of the Confederacy.[1]

[1] General Washington, in his correspondence with his friends in the North, expressed great chagrin at the course taken in New Hamp-

To Maryland, whose convention was to meet on the 21st of April, the public attention was then turned, with so much the greater anxiety in consequence of the temporary check which the Constitution had thus received in the East. In this State, a powerful personal influence was arrayed against its adoption. Mr. Luther Martin, the attorney-general of the State and recently one of its delegates in the Federal Convention, made by far the most elaborate attack that had yet appeared upon the principles of the Constitution under the imposing title of "Genuine Information laid before the Legislature of Maryland," in which he freely intermingled animadversions on the spirit and policy of the convention with a systematic criticism of the Constitution itself. He was vigorously sustained in his opposition by the co-operation of Mr. Samuel Chase, a man not only distinguished by the earnestness of his character and the force of his abilities, but invested with a dazzling prestige by the bold-

shire. In a letter to General Lincoln, of the 10th of March, 1788, he says: —

"I am sorry to hear that the issue of the government in New Hampshire is in any measure dubious. Our concurrent accounts from that quarter have been favorable in the highest degree. They would have justified the expectation of unanimity in their convention."

In a letter to General Knox, of the 30th of March, after hearing of the adjournment of the convention, he says: —

"The conduct of the State of New Hampshire has baffled all calculation, and has come extremely *mal-à-propos* for a favorable decision on the proposed Constitution in this State. For, be the real cause of the late adjournment what it may, the anti-federal party with us do not scruple to pronounce that it was done to await the issue of the convention here, before it would decide; and add, that, if this State should reject it, all those who are to follow will do the same, and consequently that it cannot obtain, as there will be only eight States in favor of the measure."

ness with which he had advocated, first before the people, and afterwards in Congress, the declaration of American Independence.

But, in spite of the strenuous exertion of individual influence and talents against the Constitution, it commended itself to the judgment of the great body of the people of Maryland. A large majority of delegates favorable to its ratification were returned to the convention, many of whom were instructed by the people, not only to vote for the acceptance of the Constitution, but against any proposition of amendment. An effort was made by the adversaries of the Constitution to obtain an adjournment of the convention to a future day. But this, with every other dilatory expedient, was promptly overruled; and on the 28th of April, 1788, after a session of seven days, an unqualified ratification of the Constitution was pronounced by sixty-three voices in favor of it, to eleven only against it.

The State of South Carolina was the next, in order of time, to act upon the Constitution. Being the first of the staple-exporting States of the South in which the Constitution underwent a close and rigid scrutiny, great solicitude, as well as curiosity, was felt with regard to her decision. A preliminary discussion of the merits of the Constitution had already taken place in the legislature, at the time provision was made for calling a convention to decide finally on the question of its acceptance. In that discussion, among various topics of objec-

tion urged with much zeal and perseverance, a strong appeal was made to the peculiar interests of the States, having large agricultural surpluses for exportation, as likely to be injuriously affected by the operation of the power to regulate commerce granted to Congress by the new Constitution. That power, it was said, "would throw into the hands of the Eastern States the carrying trade, and enable them to lay the Southern States under payment of whatever freightage they thought proper to impose."[1]

This objection was more or less urged by all the opponents of the Constitution in the Southern States; and as it was probably nowhere more maturely considered than in South Carolina, then the largest exporting State but one of the Union, it is a matter of no small historical interest to see what answer was there given to it. The reply came mainly from General Cotesworth Pinckney, who, we have seen, was one of the delegates of South Carolina in the Federal Convention, and the leading champion of the Constitution both in the legislature and the convention of the State. The superior navigation of the Eastern States, he observed, made a close union with them very desirable to the South, which was almost without shipping of her own; and the fostering of that navigation by general equitable regulations became, therefore, a matter of common interest to both sections.

[1] See the remarks of Mr. Rawlins Lowndes before the legislature of South Carolina, in January, 1788, Elliots's Debates, vol. III. p. 359.

"Ought we not," said he, "to endeavor to increase that species of strength which will render them of most service to us, both in peace and war? I mean their navy. We certainly ought; and, by doing this, we render it their particular interest to afford us every assistance in their power, as every wound we received will eventually affect them. If," he added, "our government is to be founded on equal compact, what inducement can they have to be united with us, unless we grant them some privileges with regard to their shipping? Or, supposing they were to unite with us without having those privileges, can we flatter ourselves that such union would be lasting, or that they would afford us effectual assistance, when invaded? Interest and policy both concur in prevailing upon us to submit the regulation of commerce to the general government."[1]

The convention of the State assembled at Charleston on the 12th day of May, 1788, and continued in session eleven days. After a discussion of eight days on the merits of the Constitution, a motion of adjournment to a future day was made; but it was overruled by a majority of forty-six votes. At length, on the 23d of May, 1788, the final question was taken on the ratification of the Constitution; and it was carried in the affirmative by a vote of one hundred and forty ays to seventy-three nays. The ratification was accompanied with the recommendation of a few subsequent amendments, cor-

[1] See Elliots's Debates, vol. III. p. 356.

responding in part with those proposed by the convention of Massachusetts.

Eight States had now pronounced their ratification of the Constitution; and, as it was provided by the Constitution that the assent of nine States should suffice for its establishment among the States so assenting, a peculiar and paramount importance was attached to the proceedings of the next State which should act upon the subject. Virginia was that State; and she became the battle-field of the Constitution. It was known that some of her most distinguished public men had openly and warmly arrayed themselves in opposition to it. Two of her delegates in the Federal Convention, Colonel Mason and Governor Randolph, had, as we have seen, refused their signatures to it, and had since formally and publicly set forth their objections to it. Mr. Richard Henry Lee, whose prompt opposition to it, on its communication to Congress, has been already noticed, had likewise, in a published letter to the Governor, set forth in detail and with great earnestness the grounds of his opposition.[1]

General Washington, on his return to Mount Vernon from the convention at Philadelphia, trans-

[1] The letters of Richard Henry Lee and Colonel Mason, setting forth their objections to the Constitution, were written about the same time, — in October, 1787. General Washington, in writing to Mr. Madison at the time, says: —

"The political tenets of Colonel Mason and Colonel R. H. Lee are always in unison. It may be asked, Which of them gives the tone? Without hesitation, I answer the latter; because the latter, I believe, will receive it from no one."

mitted copies of the Constitution to Mr. Henry, General Thomas Nelson, and Colonel Benjamin Harrison, all of whom, besides their other titles to public consideration and distinction, had successively filled the office of chief magistrate of the State; and each of them, in his answer, mingling expressions of great personal respect with the declarations of their opinions, avowed their repugnance to the proposed system.[1]

To balance this imposing array of influence and talents against the Constitution in Virginia, stood the names of Washington, Madison, and Blair, all three of whom had affixed their signatures to it in the convention. Chancellor Wythe, another of the delegates of the State in the Federal Convention, though he had been withdrawn from his attendance on the body, before the close of its deliberations, by a severe domestic affliction, was likewise known to be in favor of the plan of government recommended. It soon became known also that Judge Pendleton, whose ill-health had prevented him from taking an active part in the discussions which preceded the formation of the Constitution, was decidedly friendly to its adoption. Mr. Madison, on the 20th day of September, 1787, only three days after the adjournment of the convention, enclosed to him a copy of the Constitution in a letter, from which we give the following extract as marking the delicacy, and entire freedom from partisan bias, that characterized all his communications on the subject: —

[1] See Sparks's Washington, vol. IX. pp. 265–267.

"The privilege of franking having ceased with the convention, I have waited for this opportunity of enclosing you a copy of the proposed Constitution for the United States. I forbear to make any observations on it, either on the side of its merits or its faults. The best judges of both will be those who can combine, with a knowledge of the collective and permanent interest of America, a freedom from the bias resulting from a participation in the work. If the plan proposed be worthy of adoption, the degree of unanimity attained in the convention is a circumstance as fortunate as the very respectable dissent on the part of Virginia is a subject of regret. The double object of blending a proper stability and energy in the government with the essential characters of the republican form, and of tracing a proper line of demarcation between the national and State authorities, was necessarily found to be as difficult as it was desirable, and to admit of an infinite diversity of opinions concerning the *means* among those who were unanimously agreed concerning the *end*."

Mr. Pendleton, in his reply of the 8th of October, after various observations on the work of the convention, evincing alike the penetration and the judicial impartiality with which he had considered it, concluded with the expression of his hearty assent, in the main, to the wisdom of its provisions and the expediency of its adoption.

The mere mention of the names under whose auspices, on the one side and the other, the great

controversy on the Constitution was opened in Virginia, sufficiently attests the advantage, in point of activity and zeal, possessed by its opponents: two of whom especially, Mr. Henry and Mr. Lee, had been long distinguished for their tribunitian talents and popularity; and all of them, with the exception of General Nelson, were either members of the legislature or in other positions that enabled them to act publicly and officially on the popular mind. On the other hand, the leading patrons of the Constitution were men, however exalted in character, whose temperament or position debarred them from the active dissemination of their opinions.

This characteristic difference between the two parties was seen through the whole progress of the contest. "The adversaries of a measure," said Washington in a letter to a friend,[1] "are generally, if not always, more violent and active than its advocates, and frequently employ means which the others do not, to accomplish their ends;" and to another correspondent[2] he said, "The opponents of the Constitution here are indefatigable in their exertions, while its friends seem to rest the issue on the goodness of their cause." To a third,[3] in a later stage of the controversy, he speaks in yet stronger terms of "the unfair (I might, without much impropriety, have made use of a harsher

[1] Dr. David Stuart, 30th November, 1787.
[2] General Lincoln, 10th March, 1788.
[3] General Knox, 30th March, 1788.

expression) conduct practised by the opposition here, to rouse the fears and inflame the minds of the people."

The General Assembly of the State met at Richmond on the 15th October, 1787; and the Governor immediately laid before them a copy of the Constitution recommended by the convention of Philadelphia. The sentiments of the members were at first exceedingly favorable to it. General Washington, in a letter of the 22d of October, 1787, to Mr. Madison, then in Congress at New York, gave him the following extract of a communication received from a correspondent at Richmond:[1] —

"It gives me much pleasure to inform you, that the sentiments of the members are infinitely more favorable to the Constitution than the most zealous advocates for it could have expected. I have not met with one, in all my inquiries (and I have made them with great diligence), opposed to it, except Mr. Henry, who, I have heard, is so, but could only conjecture it from a conversation with him on the subject. Other members who have been active in their inquiries tell me that they have met with none opposed to it. It is said, however, that old[2] Mr. Cabell, of Amherst, disapproves of it. Mr. [George] Nicholas has declared himself a warm

[1] This correspondent of General Washington was, doubtless, his nephew, Bushrod Washington (afterwards associate justice of the supreme court of the United States), who was then a member of the General Assembly of Virginia.

[2] So called here from the rare circumstance of his son being a member with him from the same county. The father and son were afterwards colleagues from the same county in the Convention.

friend to it. . . . I cannot forbear mentioning that the Chancellor [Pendleton] espouses it so warmly as to declare he will give it his aid in a convention, if his health will permit. As there are few better judges of such subjects, this must be deemed a fortunate circumstance."

On the 25th of October, resolutions were passed, by general consent, for referring the Constitution to a convention, to be assembled in Richmond, on the first Monday in June next; and it was recommended to the people of the several counties to choose two delegates for each county, on their respective court-days, in the month of March, to represent them in the convention. It being thought necessary, at a subsequent period of the session, to pass an act providing for the pay of the members of the convention and ascertaining their privileges, advantage was taken of the circumstance by Mr. Henry, and other opponents of the Constitution, to introduce into the act a contingent provision for defraying the expenses that would attend the representation of the State in another general convention, or communications with the conventions of other States, for the purpose of procuring amendments of the Constitution before its final ratification, if such amendments should be deemed expedient by the convention of Virginia.[1]

[1] See Journal of the House of Delegates of Virginia (session of 1787), pp. 77 and 81; and Henning's Statutes at large, vol. XII pp. 462–463.

This proposition was objected to as a departure from the policy which prevailed in the original resolutions for the call of a convention, and as amounting to an implied recommendation by the legislature that amendments of the Constitution should be sought in the mode thus provided for. Its success was considered as indicating a marked change in the sentiments of the members, produced by the influence of Mr. Henry, Colonel Mason, and their coadjutors in the opposition to the Constitution. The same correspondent of General Washington, at Richmond, who has been already cited, gave him information of these proceedings; and by the latter this information was conveyed to Mr. Madison in a letter bearing date the 7th day of December, 1787. The communication to General Washington here referred to was in these terms: —

"I am sorry to inform you, that the Constitution has lost so considerably that it is doubted whether it has any longer a majority in its favor. From a vote which took place the other day, this would appear certain, though I cannot think it so decisive as its enemies consider it. It marks, however, the inconsistency of some of its opponents. At the time the resolutions calling a convention were entered into, Colonel Mason sided with the friends to the Constitution, and opposed any hint being given, expressive of the sentiments of the House as to amendments. But, as it was unfortunately omitted at that time to make provision for the

subsistence of the convention, it became necessary to pass some resolution on the subject; when a resolution was added, providing for any expense which may attend an attempt to make amendments.

"As Colonel Mason had, on the former occasion, declared that it would be improper to make any discovery of the sentiments of the House on the subject, and that we had no right to suggest any thing to a body paramount to us, his advocating such a resolution was matter of astonishment. It is true, he declared, it was not declaratory of our opinion. But the contrary must be very obvious. As I have heard many declare themselves friends to the Constitution since the vote, I do not consider it altogether decisive of the opinion of the House with regard to it."[1]

[1] The bill containing the provision referred to above was prepared and reported by Mr. Henry (see Journal of House of Delegates, for 1787, pp. 77 and 81), and was carried, mainly through his influence, by a majority of about fifteen votes, as we learn from a letter of Colonel Monroe, then a member of the House of Delegates, to Mr. Madison, dated 6th of December, 1787.

An instance of yet more remarkable mutability and inconstancy in the legislative mind, produced by the magic influence of Mr. Henry, occurred during this same session, and deserves to be recorded as an illustration of the omnipotent sway he then wielded in the General Assembly of Virginia. Under the auspices of the circular letter of Congress, of which we have already given an account (ante, p.205), resolutions, patronized by Mr. George Nicholas and Colonel Mason, were early adopted for repealing, in conformity to the Treaty of Peace, all acts of former legislation which prohibited the recovery of debts due to British subjects, — the repeal to take effect as soon as a similar provision should be made by the other States of the Confederacy. Mr. Henry earnestly opposed the resolutions in this form, and moved to amend them by making the repeal depend on the *previous* fulfilment of the treaty by Great Britain in the surrender of the West-

Mr. Madison, though absent, was now in a situation, from the information communicated to him by his friends in Virginia, to take a comprehensive and generally accurate survey of the field of public opinion there; and, as it was a theatre on which he was soon to play a most important part, and to which the eyes of the whole Confederacy were anxiously turned, the following details, given by him in a letter to Mr. Jefferson, dated the 9th of December, 1787, seem, both by their historical and personal interest, to demand insertion here: —

"The Constitution proposed by the late convention engrosses almost the whole political attention of America. All the legislatures, except that of Rhode Island, which have been assembled, have agreed in submitting it to State conventions. Virginia has set the example of opening a door for

ern posts, and providing indemnity for the slaves taken away at the close of the war. After an animated and protracted debate of four days, the amendment of Mr. Henry was rejected, and the resolutions passed in their original form by a majority of thirty votes, — seventy-two to forty-two. (See Journal of House of Delegates, pp. 51–52.) This was on the 17th November, 1787.

On the 3d day of December following, the question came up again on the bill reported in pursuance of the resolutions that had been passed, when Mr. Henry renewed his proposition as a substitute for the bill, and carried it, in the face of the former recorded vote of the House, by a majority of forty-nine, — eighty to thirty-one (see Journal of House of Delegates, pp. 79–80), — carrying captive at his chariot-wheels, along with his host of converts, the leading champion in debate of the original resolutions, Mr. George Nicholas, who, according to Mr. Monroe's letter cited above, "owned himself convinced by the arguments that had been used." Among those who stood firm, not to mention others, were Mr. Monroe himself, Colonel Mason, Governor Harrison, and Mr. Marshall. — See also letter of Mr. Madison to Mr. Jefferson, of 20th December, 1787, in Madison Debates and Correspondence, vol. II p. 658.

amendments, if the convention should choose to propose them. Maryland has copied it. The States which preceded referred the Constitution, as recommended by the general convention, to be ratified or rejected as it stands. . . .

"The body of the people in Virginia — particularly in the upper and lower country, and in the Northern neck — are, as far as I can gather, much disposed to adopt the new Constitution. The middle country, and the South side of James River, are principally in the opposition to it. As yet, a large majority of the people are under the first description; as yet, also, are a majority of the assembly. What change may be produced by the united influence of Mr. Henry, Mr. Mason, and the Governor [Randolph], with some pretty able auxiliaries, is uncertain.

"My information leads me to suppose there must be three parties in Virginia. The *first* for adopting, without attempting amendments. This includes General Washington, and the other deputies who signed the Constitution; Mr. Pendleton; Mr. Marshall, I believe; Mr. Nicholas; Mr. Corbin; Mr. Zachariah Johnson; Colonel Innes; Mr. Beverly Randolph, I understand; Mr. Harvie, Mr. Gabriel Jones, Dr. Walter Jones, &c., &c., &c. At the head of the *second* party, which urges amendments, are the governor and Mr. Mason. These do not object to the substance of the government, but contend for a few additional guards in favor of the rights of the States and the people.

I am not able to enumerate the characters, who fall in with their ideas, as distinguished from those of the *third* class, at the head of which is Mr. Henry. This class concurs, at present, with the patrons of amendments; but will contend for such as strike at the essence of the system, and must lead to an adherence to the principle of the existing confederation, — which most thinking men are convinced is a visionary one, — or to a partition of the Union into several Confederacies.

"Mr. Harrison, the late governor, is with Mr. Henry. The general and admiralty courts, with most of the bar, oppose the Constitution; but on what particular grounds, I am unable to say. General Nelson, Mr. John Page,[1] Colonel Bland, &c., are also opponents; but on what principles, or to what extent, I am equally at a loss to say. In general, I must note that I speak, with respect to many of them, from information that may not be accurate, and merely as I should do in a free and confidential conversation with you. . . . Mr. Henry is the great adversary who will render the event precarious. He is, I find, with his usual address, working up every possible interest into a spirit of opposition.

"It is worthy of remark, that, whilst in Virginia and some of the other States in the Middle and Southern district of the Union, the men of intelligence, patriotism, property, and independent cir-

[1] Subsequent and more correct information placed Mr. Page in the ranks of the friends of the Constitution.

cumstances are thus divided, all of this description, with a few exceptions, in the Eastern States and most of the Middle States, are zealously attached to the proposed Constitution. . . . It is not less worthy of remark, that in Virginia, where the mass of the people have been so much accustomed to be guided by their rulers on all new and intricate questions, they should on the present, which certainly surpasses the judgment of the greater part of them, not only go before, but contrary to, their most popular leaders; and the phenomenon is the more wonderful, as a popular ground is taken by all the adversaries to the new Constitution. Perhaps the solution in both these cases would not be very difficult; but it would lead to observations too diffusive, and to you unnecessary. I will barely observe, that the case in Virginia serves to prove that the body of sober and steady people, even of the lower order, are tired of the vicissitudes, injustice, and follies which have so much characterized public measures, and are impatient for some change which promises stability and repose."

The three great and most influential leaders of the opposition to the Constitution in Virginia were undoubtedly Mr. Henry, Colonel Mason, and Mr. Richard Henry Lee. Colonel Mason, whose objections to the Constitution were, as we have seen, originally limited to a few points, was soon borne away by the excitement of his feelings into a warm and indiscriminate opposition. In the paper which he published shortly after his return from Philadel-

phia, he extended his criticisms, in an unsparing tone, to every part of the Constitution, — not excepting even those provisions of it to which he had given an express assent in the convention,[1] — and denounced the most fatal and ruinous consequences to the country from its adoption. General Washington, in a letter to Mr. Madison of the 10th of October, 1787, while mentioning the fact that Colonel Mason had declared himself in favor of submitting the Constitution to a convention of the people, adds: "Had his sentiments, however, been opposed to this measure, his instructions (for the delegates of this county are so instructed) would compel him to vote for it. Yet I have no doubt that his assent will be accompanied by the most tremendous apprehensions which the highest coloring can give to his objections. To alarm the people seems to be the groundwork of his plan." [2]

The same policy and spirit appear to have actuated Mr. Lee. A manuscript copy of his letter to the Governor, setting forth his objections to the Constitution, was industriously circulated among the members of the assembly for several weeks before its publication, and conspired, with the personal influence of Mr. Henry and Colonel Mason, to produce the marked change that had taken place in the early sentiments of that body.[3]

[1] See the objections of Colonel Mason, and the observations made upon them by Mr. Madison in a letter to General Washington, in Sparks's Washington, vol. IX. pp. 544–549.

[2] Sparks's Washington, vol. IX. pp. 267–269.

[3] See letter of General Washington to Mr. Madison, of December 7, 1787. In this letter, General Washington says, "The enemies

Mr. Henry was in himself a host on the side of the opponents of the Constitution. His consummate tact, his profound knowledge of human nature, and especially of the characters of his countrymen, the boundless resources of his ingenuity and eloquence, the dramatic charm of his conversation and manners, gave him an almost irresistible power over the opinions and conduct of men acting in masses. In the earnestness with which he pursued his object, it was not his wont to stop and hesitate about the arguments he used, provided he found them effectual for his purpose.[1] He knew how to enlist local and personal prejudices — every interest, every passion — in the service of his cause; and this power he used to the utmost in the great struggle in which his pride of victory and his public convictions were now alike engaged.[2]

of the Constitution [in the legislature] leave no stone unturned to increase the opposition to it."

[1] See Wirt's Life of Henry (Philadelphia edition of 1817), p. 252.

[2] Among the papers of Mr. Madison is a letter addressed to him by an eminent and well-known clergyman, an early college friend of his, and a resident of the same county with Mr. Henry, giving an account of the kind of topics and arguments by which the great tribune of the people was accustomed to arouse their fears and jealousies with regard to the Constitution.

"Before the Constitution appeared," he says, "the minds of the people were artfully prepared against it; so that all opposition [to Mr. Henry], at the election of delegates to consider it, was in vain. That gentleman has decended to lower artifices and management on the occasion than I thought him capable of. . . . . If Mr. Innes has shown you a speech of Mr. Henry to his constituents, which I sent him, you will see something of the method he has taken to diffuse his poison. . . . It grieves me to see such great natural talents abused to such purposes. He has written letters repeatedly to Kentucky; and, as the people there are alarmed with an apprehension of their interests being about to be

Governor Randolph was not to be classed, like the three gentlemen just named, with the thorough and uncompromising opponents of the Constitution. He had recently found occasion to define to the public, with more clearness and precision than he had hitherto done, the position he held on the subject. Before the meeting of the legislature, he had prepared an elaborate communication to that body, presenting in detail the reasons of his course

sacrificed by the Northern States, I am convinced that it has been owing to a story, which I have heard Mr. Henry tell, respecting the measure proposed in Congress for a perpetual relinquishment of the navigation of the Mississippi to the Spaniards. He has found means to make some of the best people here believe that a religious establishment was in contemplation under the new government. He forgets that the Northern States are more decided friends to the voluntary support of Christian ministers than the author, or at least warm abetter, of the assessment bill in this State." — Manuscript letter of Rev. John Blair Smith, President of Hampden Sidney College, to Mr. Madison, dated 12th of June, 1788.

A recent writer, whose book has met with no small degree of political favor, and the vigor and elegance of whose style naturally challenge attention, pronounces the adoption of the Constitution by Virginia "the most stupendous fraud, involving the greatest political turpitude, ever practised on a free people;" and scatters, broad-cast, charges and insinuations of unworthy means employed by its friends, in that proud and ancient commonwealth, to achieve success. (See "Lost Principle, &c.," pp. 55, 78, 103, 107, 116, 119, 136, 164, 165, 169, 170, 172.) In these accusations, Mr. Madison is a principal mark, and the Father of his country, Washington, does not escape; while the opponents of the Constitution are held up as paragons of purity, virtue, and wisdom. We would fain believe, that, in this great public contest, neither party was actuated by any other principle than a lofty spirit of patriotism, and a sense of public duty. But as the conduct of the friends of the Constitution has been so gravely impeached, and, so far as we have seen, without the slightest proof to sustain the impeachment, we have felt it to be due to the truth of history to present to the notice of the reader, from the papers before us, as we have done in the text and in this note, a few samples of the electioneering industry, and zeal of proselytism, displayed by the opposite party.

in the Federal Convention, as well as the considerations which would control his ultimate decision and vote as a citizen of the Commonwealth. He was prevented by certain motives of delicacy from laying that communication before the legislature; but, in the latter part of December, 1787, it was made public through the press in consequence of a call addressed to him by several gentlemen of high respectability.[1] In that paper, he reviewed, at great length, the radical imperfections of the "articles of confederation;" insisted on the necessity of substituting for them an entirely new system; dwelt on the vital importance of union; and, while stating specific objections to the proposed Constitution and recommending an effort to obtain amendments of it prior to its ratification, intimated his determination, "as an individual citizen, to accept it as it was," if that effort should fail. From the moment of the appearance of that paper, Governor Randolph was no longer regarded by the decided adversaries of the Constitution as of their party; and he became thenceforward, indeed, an object of their suspicion and denunciation.

The legislature adjourned on the 8th day of January, 1788; the members carrying into their respective counties the impressions they had received, in the focus of political excitement and discussion at Richmond, for or against the Constitution. An active canvass soon commenced throughout the State for the elections to take place in the

[1] See Carey's Museum, vol. III. pp. 61–71.

month of March for the convention. Mr. Madison was still in New York, attending the session of Congress there as one of the delegates of Virginia. On the 5th of February, General Washington wrote to him, "Many have asked me, with anxious solicitude, if you did not mean to get into the convention, conceiving it of indispensable importance. Colonel Mason," he added, "who returned but yesterday, has, I am told, offered himself for Stafford county; and his friends say he can be elected, not only in that, but in the counties of Prince William and Fauquier also."

The answer of Mr. Madison, dated the 20th of February, displays in beautiful harmony his firm and unbending sense of public duty, and superiority to every selfish consideration, blended with the amiable traits of his private character.

"I have given notice," he says, "to my friends in Orange, that the county may command my services in the convention, if it pleases. I can say, with great truth, that in this overture I sacrifice every private inclination to considerations not of a selfish nature. I foresee that the undertaking will involve me in very laborious and irksome discussions; that public opposition to several very respectable characters, whose esteem and friendship I greatly prize, may unintentionally endanger the existing connection; and that disagreeable misconstructions, of which samples have been already given, may be the fruit of those exertions which fidelity will impose. But I have made up my

determination on the subject; and, if I am informed that my presence at the election in the county be indispensable, I shall submit to that condition also, though it is my particular wish to decline it, as well to avoid apparent solicitude on the occasion, as a journey of such length at a very unpleasant season."

The response of General Washington to these sentiments of Mr. Madison exhibits so strikingly the nobleness and grandeur of his own character, and illustrates in so edifying a manner the congeniality of moral and political principles which united them, that we cannot forbear to give it also.

"The determination you have come to will give much pleasure to your friends. From those in your own county, you will learn, with more certainty than from me, the expediency of your attending the election in it. With some, to have differed in sentiment is to have passed the bounds of friendship, although you should go no further. With others, for the honor of humanity, I hope there is more liberality. But the consciousness of having discharged that duty which we owe to our country is superior to all other considerations, and will put these out of the question."

From his friends in the county of Orange, Mr. Madison soon received communications, informing him of the great division of public sentiment there and the active exertions of the opponents of the Constitution, and urging his presence at the election. Among others, a former colleague

in the legislature of the State[1] wrote to him in these terms of pressing solicitation: "You know the disadvantage of being absent at elections to those who offer themselves to serve the public. I must therefore entreat and conjure you — nay, command you, if it were in my power — to be here in February, or the first of March next. Pray don't disappoint the wishes of your friends, and many others, who are wavering on the Constitution, and anxiously waiting for an explanation from you. In short, they want your sentiments *from your own mouth*, which, they say, will convince them of the necessity of adopting it. I repeat again, come."

Such an earnest and patriotic summons as this, and others not less urgent, left no room for hesitation or doubt. Mr. Madison left New York on the 4th of March; and prosecuting his journey with as much expedition as the season and the imperfect modes of conveyance then in existence would admit, and calling at Mount Vernon on his way, he arrived in Orange the day only before the election. This was sufficient for the personal communication of his sentiments "from his own mouth" which his countymen desired; and he and a colleague of corresponding opinions[2] were elected to the convention by a handsome majority over their opponents.

[1] Colonel William Moore.

[2] Mr. James Gordon. One of the opposing candidates in this election was Colonel Thomas Barbour, father of Mr. James and Mr. Philip Barbour, each of whom rose to great future eminence in the public service of the country.

Mr. Madison, being now in Virginia, awaited there the meeting of the convention, which was to take place in June. In his correspondence with Mr. Jefferson, he continued to communicate to him interesting details of what was passing in their native State with regard to the great political question of the day. The following extracts are from a letter addressed by him to his friend at Paris, on the 22d of April, 1788: —

"The proposed convention still engrosses the public attention. The elections for the convention here are just over, and promulged. From the returns (excluding those from Kentucky, which are not yet known), it seems probable, though not absolutely certain, that a majority of the members elect are friends to the Constitution. The superiority of abilities, at least, seems to lie on that side. The characters of most note which occur to me are marshalled thus: For the Constitution, — Pendleton, Wythe, Blair, Innes, Marshall, Dr. Walter Jones, George Nicholas, Wilson Nicholas, Gabriel Jones, Thomas Lewis, Francis Corbin, Ralph Wormley, jr., White of Frederick, General Adam Stephen, Archibald Stuart, Zachariah Johnson, Dr. Stuart, Parson Andrews, Henry Lee, jr., Bushrod Washington (considered as a young gentleman of talents). Against the Constitution, — Mr. Henry, Mason, Harrison, Grayson, Tyler, Meriwether Smith, William Ronald, Lawson, Bland, William Cabell, Dawson.

"The Governor [Randolph] is so temperate in

his opposition, and goes so far with the friends of the Constitution, that he cannot properly be classed with its enemies. Monroe is considered by some as an enemy; but I believe him to be a friend, though a cool one. There are other individuals of weight, whose opinions are unknown to me. Richard Henry Lee is not elected. His brother, Francis Lightfoot Lee, is a warm friend to the Constitution, I am told, but also is not elected. So are John Page and Mann Page. The adversaries take very different grounds of opposition. Some are opposed to the substance of the plan; others, to particular modifications only. Mr. Henry is supposed to aim at disunion. Colonel Mason is growing every day more bitter and outrageous in his efforts to carry his point; and will probably, in the end, be thrown by the violence of his passions into the politics of Mr. Henry.

"The preliminary question will be, whether previous alterations shall be insisted on or not. Should this be carried in the affirmative, either a conditional ratification or a proposal for a new convention will ensue. In either event, I think the Constitution and the Union will be both endangered. It is not to be expected that the States which have ratified will reconsider their determinations, and submit to the alterations prescribed by Virginia. And, if a second convention should be formed, it is as little to be expected that the same spirit will prevail in it as produced an amicable result to the first. It will be easy,

also, for those who have latent views of disunion to carry them on under the mask of contending for alterations, popular in some, but inadmissible in other, parts of the United States.

"The real sense of the people of the State cannot be easily ascertained. They are certainly attached, and with warmth, to a continuance of the Union; and, I believe, a large majority of the most intelligent and independent are equally so to the plan under consideration. On a geographical view of them, almost all the counties in the Northern neck have elected Federal deputies. The counties on the south side of James River have pretty generally elected adversaries to the Constitution. The intermediate district is much chequered in this respect. The counties between the Blue-ridge and the Alleghany have chosen friends to the Constitution without a single exception. Those westward of the latter have, as I am informed, generally, though not universally, pursued the same rule. Kentucky, it is supposed, will be divided."

In this letter, Mr. Madison classed Mr. Monroe among the friends, though not ardent ones, of the new Constitution. He was naturally led to that conclusion by an expression of opinion contained in a letter addressed to him by Mr. Monroe soon after the promulgation of the Constitution, — an opinion which had not been recalled or modified in their subsequent correspondence. In the letter referred to, dated the 13th of October, 1787, Mr. Monroe says, "There are, in my opin-

ion, some strong objections against the project, which I will not weary you with a detail of; but, under the predicament in which the Union now stands, and this State in particular, with respect to this business, they are overbalanced by the arguments in its favor."

In another letter to Mr. Madison of the 7th of February, 1788, a short time only before the election of delegates to the convention, he says, "The new Constitution still engages the minds of the people, with some zeal among the partisans on either side. It is impossible to say which preponderates. The Northern part of the State is more generally for it than the Southern. In this county [Spotsylvania], except in the town [Fredericksburg], they are against it, I believe, universally. I have this, however, from report only, not having been from home. My late colleague [Dawson] is decidedly so. Mr. Mann Page is for it, and forms an exception to the above." At the election, which took place in the following month, Mr. Monroe was returned, with Mr. Dawson, a delegate to the convention for Spotsylvania, including Fredericksburg; and in that assembly, as we shall see, he opposed the ratification of the Constitution by Virginia, except upon the condition of previous amendments.

Among the eminent men of Virginia, the opinions of Mr. Jefferson, though absent from the country, on a question of such great and lasting importance as that which now engaged the pub-

lic attention, possessed a high degree of interest to his countrymen, and became the object of anxious inquiry. Having been prevented, by his absence from following closely the succession of disastrous events which demonstrated the necessity of a radical change in the articles of confederation, he was not fully prepared, in the beginning, for so thorough a reform as that presented by the new Constitution.[1] His mind, however, was soon turned to the contemplation of the subject in all its bearings; and his first *deliberate* opinions on the question were communicated to Mr. Madison in a letter dated the 20th of December, 1787.

"I like much," he said, "the general idea of framing a government, which should go on of itself peaceably, without needing continual recurrence to the State legislatures. I like the organization of the government into legislative, judiciary, and executive. I like the power given the legislature to levy taxes; and, for that reason solely, I approve of the greater House being chosen by the people directly. For though I think a House so chosen will be very far inferior to the present Congress, will be very illy qualified to legislate for the Union, for foreign nations, &c., yet the evil does not weigh against the good of preserving inviolate the fundamental principle, that the people are not to be taxed but by representatives chosen

[1] See his letter of 13th November, 1787, to Mr. John Adams; and one of the same date to Colonel Smith.

immediately by themselves. I am captivated by the compromise of the opposite claims of the great and small States, — of the latter to equal, and the former to proportional, representation. I am much pleased, too, with the substitution of the method of voting by persons instead of that of voting by States; and I like the negative given to the executive conjointly with a third of either House, though I should have liked it better, if the judiciary had been associated for that purpose, or invested separately with a similar power. There are other good things of less moment. I will now tell you what I do not like."

He then proceeded to state his objections, which, bating some smaller matters of detail, were reducible to two points, — the omission of a Bill of Rights, and the indefinite re-eligibility of the president. "What would be the best method of procuring the establishment of the manifold good things in the Constitution, and of getting rid of the bad," — whether by adopting it in hopes of future amendment, or by the call of another convention, — he did not, he said, pretend to decide. Seeing but little prospect, at that time, of its adoption, in consequence of the vehement opposition made to it in various quarters, and particularly in his own State, he added, "At all events, I hope you will not be discouraged from making other trials, if the present one should fail. We are never permitted to despair of the Commonwealth.

I have thus told you freely what I like and what I dislike, merely as a matter of curiosity; for I know it is not in my power to offer matter of information to your judgment, which has been formed after hearing and weighing every thing which the wisdom of man could offer on these subjects."

In a letter, written two months later to another friend in Virginia, — Mr. Donald, a merchant of Richmond, — he expressed the wish, "that the nine first conventions may accept the new Constitution, because this will secure to us the good it contains, which I think great and important. But I equally wish, that the four latest conventions, whichever they may be, may refuse to accede to it till a Declaration of Rights be annexed. . . . We must take care, however," he added, "that neither this nor any other objection to the new form produces a schism in our Union. That would be an incurable evil, because near friends, falling out, never re-unite cordially; whereas, all of us going together, we shall be sure to cure the evils of our new Constitution before they do great harm."

Strange as it may seem, this letter was invoked by the leaders of the opposition in the convention of Virginia to the support of their cause. How contrary such an attempted use of it was to the real sentiments of the writer is shown by the following frank expression of his opinions, in a letter addressed by him, only a few days before the meet-

ing of the convention in Virginia, to one of his diplomatic colleagues in Europe:[1] —

"I was much pleased with many and essential parts of this instrument [the new Constitution] from the beginning. But I thought I saw in it many faults, great and small. What I have read and reflected has brought me over from several of my objections of the first moment, and to acquiesce under some others. Two only remain of essential consideration; to wit, the want of a Bill of Rights, and the expunging the principle of necessary rotation in the office of president and senator. At first, I wished, that when nine States should have accepted the Constitution, so as to ensure what is good in it, the other four might hold off till the want of the Bill of Rights, at least, might be supplied. But I am now convinced that the plan of Massachusetts is the best, — that is, to accept and amend afterwards. . . . It will be more difficult, if we lose this instrument, to recover what is good in it, than to correct what is bad after we shall have adopted it. It has, therefore, my hearty prayers; and I wait with anxiety the votes of Maryland, South Carolina, and Virginia."

The same sentiments were expressed by him in letters written, about the same time, to General Washington and Mr. Edward Rutledge, of South Carolina,[2] and ranged him in full unison of policy

[1] See letter to Mr. Carmichael, minister of the United States in Spain, dated 27th May, 1788.

[2] These letters will be found in Writings of Jefferson (Rand. edit.), vol. II. pp. 303 and 340.

and action with the great body of the friends of the Constitution in America. He looked forward with the deepest solicitude to the deliberations of the convention soon to be assembled in his own State. He knew what powerful and popular champions were to be arrayed against it there, and that the task of sustaining it would devolve mainly on his friend. "Madison," he said, "will be its main pillar; but, though an immensely powerful one, it is questionable whether he can bear the weight of such a host."[1] The fortunes of this difficult and dubious conflict will next demand our attention.

[1] Jefferson's Writings, vol. II. p. 270.

CHAPTER XXXV.

Convention of Virginia assembles at Richmond — General Character and Composition of the Body — Interest excited by its Deliberations — Order of Discussion agreed on, but not followed — Discussion opened by Mr. George Nicholas on the Side of the Constitution — Mr. Henry launches into a General Invective of the Constitution — He is supported by Colonel Mason — Reply of Governor Randolph — Remarks of Mr. Madison — Able and Impressive Speech of Mr. Pendleton — Followed by Colonel Henry Lee and Mr. Corbin — Mr. Henry renews his Attack on the Constitution in an Elaborate Speech, reviewing its Various Provisions — Victorious Defence of the Constitution by Mr. Madison in Reply — Profound Impression made by it — Letter of Mr. Bushrod Washington, a Member of the Convention, to his Uncle, General Washington — Mr. Henry returns to the Attack with Undiminished Zeal — Animated and Personal Debate between him and Governor Randolph — Temperate Speech of Mr. Monroe against the Constitution, with Particular Reference to Taxation — Mr. Marshall enters into the Discussion with his Characteristic Clearness and Ability — Followed by Mr. Nicholas in a Second Speech — Second Speech of Colonel Mason — Lucid and Able Reply of Mr. Madison to the Argument of Mr. Monroe — Mr. Grayson, in an Ingenious and Imposing Speech, and, on Grounds peculiar to himself, opposes the Constitution — Answered by Mr. Pendleton and Mr. Madison — Episode introduced by Mr. Henry respecting Proceedings of Congress on Navigation of Mississippi — Statements of Mr. Monroe and Mr. Grayson — Calm and Magnanimous Bearing of Mr. Madison — Appeals of Mr. Henry and Colonel Mason to Local and Particular Interests — Their Effect — Division of Opinion in Convention, at this time, exceedingly Close, and Issue Doubtful — Letter of Mr. Madison to General Washington — General Debate on the Constitution closed, and Discussion on the Text, Clause by Clause,

begins — Friends of the Constitution now make Visible Gains — Explanation and Defence of the Several Provisions of the Constitution devolves mainly on Mr. Madison — Discussions with Mr. Henry — Comparison between them as to Manner and Style of Debate — Discussion on the Text of the Constitution closes — Opponents of Constitution despond — Imprudent Speech of Colonel Mason — Letter of Mr. Madison to General Washington — Mr. Wythe moves Ratification of Constitution, with Propositions of *Subsequent* Amendment — Mr. Henry insists on *Previous* Amendments, and moves Substitute for Mr. Wythe's Proposition — Three Days' Discussion on these Rival Propositions — Renewed Contest between Mr. Madison and Mr. Henry — Mr. Wythe's Proposition carried by Majority of Eight Votes — Committee appointed to prepare Form of Ratification — Report of Committee agreed to — Argument in Favor of Right of Peaceable Secession attempted to be drawn from Form of Ratification in Virginia — Testimony against it furnished by Contemporary Letters of Mr. Madison to General Washington and Colonel Hamilton — Uniform Opposition of Mr. Madison to the Doctrine — His Letter to Mr. Everett — Antagonism and Intellectual Combats between Mr. Henry and Mr. Madison in Convention of Virginia, a Stirring Spectacle — Described by a Contemporary and Eye-witness — Instructive Lesson to be derived from it — Character of Mr. Madison's Eloquence — Persuasive Power and Effect of it established by Concurring Testimony of Chief Justice Marshall, Mr. Jefferson, and Mr. Gallatin.

The convention of Virginia, to decide on the acceptance or rejection of the proposed Constitution for the Union, assembled in Richmond, on Monday, the 2d day of June, 1788. The body consisted of one hundred and seventy members, embracing, with many characters eminent by their talents and public services, a fair collective representation of the moral worth, the intelligence, and social respectability of the proprietary and middling classes of the State. The peculiar inter-

est of the occasion secured a general attendance of the members on the first day of the session. The venerable Pendleton, then in the sixty-eighth year of his age, was unanimously chosen president of the convention. After completing its organization by the election of other officers and the appointment of a committee of privileges and elections, it adjourned to the following day; when the rules and orders of the House of Delegates were adopted for its government, and a resolution passed to discuss the Constitution in committee of the whole, "clause by clause, through all its parts," before any question, general or particular, should be propounded upon it.

On Wednesday, the 4th day of June, the convention resolved itself into a committee of the whole, — Mr. Wythe in the chair, — to take into consideration the proposed plan of government. In the lists, on the side of the Constitution, appeared as the principal combatants, Mr. Pendleton, Mr. Madison, Governor Randolph, Mr. George Nicholas, Mr. John Marshall, Mr. Innes, Colonel Henry Lee, and Mr. Corbin; in opposition to it, Mr. Henry, Colonel Mason, Mr. Monroe, Mr. Grayson, Colonel Benjamin Harrison, former Governor, and Mr. Tyler.

Besides the members who were leaders in debate on the one side and the other, there was a large number of able men on the benches of the convention, distinguished by past or destined to be distinguished by future public services, who took no part

in the animated contests of the floor, but sat intelligent listeners and judges of the great questions under discussion. Among these, it can hardly be deemed invidious to mention the names of John Blair, Paul Carrington, Meriwether Smith, Walter Jones, Theodoric Bland, William Cabell, Thomas Lewis, Alexander White, Gabriel Jones, Archibald Stuart, Humphrey Marshall, Stevens Thompson Mason, Wilson Cary Nicholas, Bushrod Washington, and William Ronald. The audience assembled to hear these grand debates did not consist of members of the convention only. The lobbies and galleries were crowded, day by day, with men of intelligence and patriotism from every part of Virginia, and with distinguished strangers from other States,— such was the profound interest inspired by the magnitude of the decision to be pronounced, and the conflict of the intellectual giants who were to enlighten and influence that decision.

The discussion was opened by Mr. George Nicholas. Inheriting an honored name, and early distinguished by his gallant participation in the first trial of arms on the soil of Virginia in the War of the Revolution, he had risen to get higher distinction by the display of his forensic and parliamentary talents. The preamble of the Constitution, and the first two sections of the first article relating to the organization of the House of Representatives being under consideration, he confined himself strictly, according to the order of discussion agreed upon, to the questions presented by those

sections, and gave a lucid exposition of the policy of the framers of the Constitution as to the election, qualifications, numbers, term of service, powers, and responsibility of the popular branch of the national legislature.

He was followed by Mr. Henry, who launched at once into a general invective against the Constitution, and, with the practised skill of a veteran popular orator, sought to prepossess the minds of his hearers with vague and undefined alarms.

"Mr. Chairman," he said, "the public mind, as well as my own, is extremely uneasy at the proposed change of government. Give me leave to form one of the number of those who wish to be thoroughly acquainted with the reasons of this perilous and uneasy situation. . . . I consider myself as the servant of the people of this Commonwealth, — as a sentinel over their rights, liberty, and happiness. I represent their feelings when I say that they are exceedingly uneasy, being brought from that state of full security which they enjoyed, to the present delusive appearance of things. . . . I consider the Republic to be in extreme danger. If the public situation be thus uneasy, whence has arisen this fearful jeopardy? It arises from this fatal system; it arises from the utter annihilation of the most solemn engagements of the States; a proposal of establishing nine States into a Confederacy, to the eventual exclusion of four States."

With other observations in the same vein, he continued: "That this is a consolidated govern

ment is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen [the delegates of Virginia in the Federal Convention]; but, sir, give me leave to demand what right had they to say, '*We, the people*,' instead of '*We, the States*.' States are the characteristics and soul of a confederation. If the States be not the agents of this compact, it is one great consolidated, national government of the people of all the States. . . . On this great occasion, I would demand the cause of their conduct. Even from that illustrious man who saved us by his valor, I would have a reason for his conduct. . . . The Federal Convention ought to have amended the old system; for this purpose they were solely delegated; the object of their mission extended to no other consideration. You must, therefore, forgive the solicitation of one unworthy member to know what danger could have arisen under the present confederation, and what are the causes of this proposal to change our government."

After an animated reply from Governor Randolph, in the course of which he declared that the day for previous amendments was now past, and that he should go for a ratification of the Constitution as it was, trusting to future amendments,— Colonel Mason rose, and addressed the convention. He contended, as Mr. Henry had done, that the government proposed by the Constitution was a consolidated one, involving the annihilation of the

State governments; but "candidly acknowledged the inefficacy of the confederation," and declared that "no man is a greater friend to a firm union of the American States than he was." He particularly objected to the power granted to Congress of laying direct taxes, and dwelt much on the inadequacy of the representation provided for by the Constitution. He said, "If such amendments be introduced as shall exclude danger, I shall most gladly put my hand to it;" and, in that case, an indispensable amendment, in his estimation, would be, "that Congress shall not exercise the power of raising direct taxes, till the States shall have refused to comply with the requisitions of Congress. On this condition, it may be granted; but I see no reason to grant it unconditionally."

The discussion of the day, which was but a skirmish preliminary to the great battle, was closed by a few remarks from Mr. Madison. He said it would give him great pleasure to concur with his honorable colleague in any proper, conciliatory plan. The clause under consideration was only explanatory of the proportion which representation and taxation shall bear to one another. "The power of laying direct taxes," he added, "will be more properly discussed, when we come to the part of the Constitution which vests that power in Congress. At present, I must endeavor to reconcile our proceedings to the resolution we have taken, by postponing the examination of the power till we come properly to it. With respect to convert-

ing the confederation to a complete consolidation, I think no such consequence will follow from the Constitution, and that, with more attention, he will see he is mistaken. With respect to the number of representatives, I reconcile it to my mind when I consider it may be increased to the proportion fixed [one for every thirty thousand inhabitants]; and that, as it may be so increased, it will be, because it is the interest of those who alone can prevent it, — our representatives, who will depend on their good conduct for their re-election."

On the following day, the discussion was resumed by Mr. Pendleton, who spoke with the dignity, wisdom, and authority which belonged to his character, and so well became his station and his years. He reviewed in succession all the topics of alarm for the public liberty, and objections to the Constitution brought forward by Mr. Henry and Colonel Mason, and opposed to them the suggestions of a calm and unbiassed reason. We cannot refrain from giving here a few brief extracts from his remarks, which, besides their intrinsic weight, will serve as specimens of a style and power of debate, that, in spite of age and infirmity, retained all their freshness and beauty: [1] —

[1] Mr. Jefferson, speaking of Mr. Pendleton in the meridian of his powers, says: —

"Taken all in all, he was the ablest man in debate I have ever met with. He had not, indeed, the poetic fancy of Mr. Henry, his sublime imagination, his lofty and overwhelming diction. But he was cool, smooth, and persuasive; his language flowing, chaste, and embellished; his conceptions quick, acute, and full of resource; never vanquished. . . . Add to this, he was one of the most virtuous and benevolent of men; the kindest

"My worthy friend" [Mr. Henry], he said, "has expressed great uneasiness in his mind, and informed us that a great many of our citizens are also extremely uneasy, at the proposal of changing our government; but that, a year ago, before this fatal system was thought of, the public mind was at perfect repose. It is necessary to inquire whether the public mind was at ease on the subject; and, if it be since disturbed, what is the cause. What was the situation of this country before the meeting of the Federal Convention? Our general government was totally inadequate to the purposes of its institution; our commerce decayed; our finances deranged; public and private credit destroyed,—these and many other national evils rendered necessary the meeting of that convention. If the public mind was then at ease, it did not result from a conviction of being in a happy and easy situation: it must have been an inactive, unaccountable stupor.

"The Federal Convention devised the paper on your table as a remedy to remove our political diseases. What has created the public uneasiness since? Not public reports, which are not to be depended upon; but mistaken apprehensions of danger, drawn from observations on governments which do not apply to us. When we come to inquire into the origin of most governments of the world, we shall find that they are generally dictated by a conqueror at the point of the sword, or

friend; the most amiable and pleasant of companions, which ensured a favorable reception to whatever came from him."

are the offspring of confusion, when a great popular leader, taking advantage of circumstances, if not producing them, restores order at the expense of liberty, and becomes the tyrant over the people. It may well be supposed, that, in forming a government of this sort, the conqueror will take care of his own emoluments, and have little concern for the interests of the people. . . . But what is our case? We are perfectly free from sedition and war; we are not yet in confusion; we are left to consider our real happiness and wisdom; we want to secure these objects; we know they cannot be attained without government. . . . There is no quarrel between government and liberty: the former is the shield and protector of the latter. The war is between government and licentiousness, faction, turbulence, and other violations of the rules of society to preserve liberty."

To the terrors of a consolidated government, so much dwelt upon by Mr. Henry and Colonel Mason, he offered this common-sense and practical reply: —

"Let us consider whether it be such a government or not. I should understand a consolidated government to be that which has the sole and exclusive power, legislative, executive, and judicial, without any limitation. Is this such a government? or can it be changed to such a one? It only extends to the general purposes of the Union. It does not meddle with the local, particular affairs of the States. Can Congress legislate for the State

of Virginia? Can they make a law altering the form of transferring property, or the rule of descents, in Virginia? In one word, can they make a single law for the individual, exclusive purpose of any State?

"It is the interest of the Federal to preserve the State governments: upon the latter, the existence of the former depends. The Senate derives its existence immediately from the State legislatures; and the representatives and president are elected under their direction and control. They also preserve order among the citizens of their respective States; and, without order and peace, no society can possibly exist. Unless there be State legislatures to continue the existence of Congress, and preserve order and peace among the inhabitants, this general government, which gentlemen suppose will annihilate the State governments, must itself be destroyed. When, therefore, the Federal government is, in so many respects, so absolutely dependent on the State government, I wonder how any gentleman, reflecting on the subject, could have conceived the idea of a possibility of the former destroying the latter."

Mr. Pendleton was followed by Colonel Lee, in a few spirited remarks, characterized by the frankness of the soldier-statesman; and then Mr. Henry again entered the arena.

He re-iterated his commentaries on the preamble of the Constitution. "The question, sir, turns on that poor, little thing, — the expression, *we*, *the*

people, instead of 'the States of America.'" He renewed, with increased intensity of epithets, his denunciation of the principles of the Constitution. "I need not take much pains to show that the principles of this system are extremely pernicious, impolitic, and dangerous. . . . The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change, so loudly talked of by some, and inconsiderately by others." He protested his jealous love of liberty, and his devotion to the welfare of Virginia. "Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. . . . We are come hither to preserve the poor commonwealth of Virginia, if it can possibly be done: something must be done to preserve your liberty and mine." He exalted the government of the confederation. "This same despised government merits, in my opinion, the highest eulogium. It carried us through a long and dangerous war; it rendered us victorious in that bloody conflict with a powerful nation; it has secured us a territory greater than any European monarch possesses; and shall a government, which has been thus strong and vigorous, be accused of imbecility, and abandoned for want of energy?"

He denied the dangers of anarchy and confusion from the inefficiency of the confederation since the return of peace. "I am not well versed in history, but I will submit to your recollection whether

liberty has been destroyed most often by the licentiousness of the people or the tyranny of rulers. . . . My great objection to this government is, that it does not leave us the means of defending our rights, and waging war against tyrants. . . . Whither is the spirit of America gone? Whither is the genius of America fled? It was but yesterday when our enemies marched in triumph through our country. Yet the people of this country could not be appalled by their pompous armaments. They stopped their career, and victoriously captured them. Where is the peril now to be compared to that? . . . If, sir, there were any, I would recur to the American spirit to defend us, — that spirit which has enabled us to surmount the greatest dangers. To that illustrious spirit I address my most fervent prayer to prevent our adopting a system so destructive to liberty."

He then proceeded to animadvert on particular parts of the Constitution. He found fault especially with that provision which requires the concurrence of three-fourths of the States for amendments. He cited that clause of the Virginia Bill of Rights which declares, that, whenever any government shall be found inadequate or contrary to the general good, a majority of the community hath an indubitable right to reform, alter, or abolish it. "This, sir, is the language of *democracy*, — that a majority of the community have a right to alter their government, when found to be oppressive. But how different is the genius of your new Constitution from this! How different from the senti-

ments of freemen that a contemptible minority can prevent the good of the majority!"

Passing to other parts of the Constitution, he said: "A standing army we shall have also to execute the execrable commands of tyranny; and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment? . . . Your militia is given up to Congress in another part of your plan. They will, therefore, act as they think proper. All power will be in their possession. . . . Your president may easily become king; your senate is so imperfectly constructed that your dearest rights may be sacrificed by what may be a small minority; and a very small minority may continue for ever unchangeably this government, though horribly defective. Where are your checks in this government? . . . I would rather infinitely, and I am sure most of this committee are of the same opinion, have a king, lords, and commons, than a government replete with such insupportable evils. . . . Away with your president! We shall have a king. The army will salute him monarch. Your militia will leave you, and assist in making him king, and fight against you; and what have you to oppose this force?"

He then made an appeal to the fears and jealousies of that portion of the people who are less favored with the goods of fortune. "Go to the poor man; ask him what he does. He will inform you that he enjoys the fruits of his labor, under his

own vine and fig-tree, with his wife and children around him, in peace and security. Go to every other member of society, you will find the same tranquil ease and content; you will find no alarms or disturbances. Why, then, tell us of dangers to terrify us into the adoption of this new form of government? And yet who knows the dangers that this new system may produce? They are out of the sight of the common people; they cannot foresee latent consequences. I dread the operation of it on the middling and lower classes of people. It is for them I fear the adoption of this system."

He descanted on the consequences of giving the power of direct taxation to Congress. "I never will give up the power of direct taxation but for a scourge. I am willing to give it conditionally; that is, after non-compliance with requisitions. I will do more, sir, and what, I hope, will convince the most sceptical man that I am a lover of the American Union; that, in case Virginia shall not make punctual payment, the control of the custom-houses and the whole regulation of trade shall be given to Congress; and that Virginia shall depend on Congress even for passports, till she shall have paid the last farthing and furnished the last soldier. Nay, sir, there is another alternative to which I would consent; even that they should strike us out of the Union, and take away from us all Federal privileges, till we comply with Federal requisitions. But let it depend upon our own pleasure to pay our money in the most easy manner for our own

people. Were all the States — more terrible than the mother country — to join against us, I hope Virginia could defend herself. But, sir, the dissolution of the Union would be most abhorrent to my mind. The first thing I have at heart is American liberty; the second is American union, and I hope the people of Virginia will endeavor to preserve that union."

He finally undertook to show, that there would be no risk of Virginia being severed from the Union by her rejecting the Constitution; and, if there were such risk, that it would be better to encounter it than to adopt the Constitution without previous and radical amendments. "Nine States are sufficient to establish this government over those nine. Imagine that nine have come into it. Virginia has certain scruples. Suppose she will, consequently, refuse to join with those States: may they not continue in friendship and union with her? If she sends her annual requisitions in dollars, do you think their stomachs will be so squeamish as to refuse her dollars? Will they not accept her regiments? They would intimidate you into an inconsiderate adoption, and frighten you with ideal evils, and that the Union will be dissolved. 'Tis a bugbear, sir. . . . The adopting States will doubtless accept our money and our regiments. And what is to be the consequence, if we be disunited? I believe it is yet doubtful whether it is not proper to stand by awhile, and see the effect of its adoption in the other States."

Governor Randolph followed Mr. Henry; and,

addressing himself more particularly to the prospect of Virginia being thrown out of the Union by her refusal to ratify the Constitution, except upon the condition of previous amendments, he presented a striking and impressive picture of the evils and dangers to which she would be exposed by her separation from the other States, and especially from her coterminous neighbor, Maryland.

It was reserved for Mr. Madison to give a thorough and comprehensive answer to Mr. Henry; of which we can here furnish only a general outline, though that may suffice to enable the reader to form some idea of those powers of close and lucid reasoning, of enlarged and discriminating knowledge, and of convincing eloquence, with which he met the fervid and splendid oratory of his great antagonist. "I shall not attempt," he said, "to make impressions by any ardent professions of zeal for the public welfare. We know the principles of every man will and ought to be judged, not by his professions and declarations, but by his conduct. By that criterion, I mean, in common with every other member, to be judged; and, should it prove unfavorable to my reputation, yet it is a criterion from which I will by no means depart. Comparisons have been made between the friends of this Constitution and those who oppose it. Although I disapprove of those comparisons, I trust, that in point of truth, honor, candor, and rectitude of motives, the friends of this system, here and in other States, are not

inferior to their opponents. But professions of attachment to the public good and comparisons of parties ought not to govern or influence now.

"We ought, sir, to examine the Constitution on its own merits solely. We are to inquire whether it will promote the public happiness: its aptitude to produce this desirable object ought to be the exclusive subject of our present researches. In this pursuit, we ought not to address our arguments to the feelings and passions, but to those understandings and judgments which were selected by the people to decide this great question by a rational investigation. I hope that gentlemen, in displaying their abilities on this occasion, instead of giving opinions and making assertions, will condescend to prove and demonstrate by a fair and regular discussion. It gives me pain to hear gentlemen continually distorting the natural construction of language; for it is sufficient if any human production can stand a fair discussion. . . . Let the dangers, with which this system is supposed to be replete, be clearly pointed out. If any dangerous and unnecessary powers be given to the general legislature, let them be plainly demonstrated; and let us not rest satisfied with general assertions of dangers, without examination."

To the alarm sounded by Mr. Henry for the public liberty from the tyranny of the few, and the claim put forward by him, in the name of Democracy, to the absolute and uncontrolled su-

premacy of a majority of numbers, Mr. Madison opposed the great lesson of history and human corruption. "On a candid review of history," he said, "we shall find, that turbulence, violence, and *abuse of power by the majority trampling on the rights of the minority*, have produced factions and commotions, which, in republics, have more frequently than any other cause produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from these causes. If we consider the peculiar situation of the United States, and what are the sources of that diversity of sentiments which pervades its inhabitants, we shall find great reason to fear that the same causes may terminate here in the same fatal effects which they produced in those republics. This danger ought to be wisely guarded against."

He then proceeded to point out certain inconsistencies in the arguments of Mr. Henry. "The gentleman informs us that the people of the country are at perfect repose; that every man enjoys the fruits of his labor peaceably and securely; and that every thing is in perfect tranquillity and safety. I wish sincerely, sir, that this were true. If this be their happy situation, why has every State acknowledged the contrary? Why were deputies from all the States sent to the General Convention? Why have complaints of national and individual distresses been echoed and re-echoed throughout the continent? Why has our

general government been so shamefully disgraced and our Constitution violated? Wherefore have laws been made to authorize a change? and wherefore are we now assembled here?

"I think I perceive a glaring inconsistency in another of the gentleman's arguments. He complains of this Constitution because it requires the consent of three-fourths of the States to introduce amendments, which shall be necessary for the happiness of the people. The consent of so many, he urges as too great an obstacle to the admission of salutary amendments, which, he strongly insists, ought to be at the will of a bare majority. We hear this argument at the very moment we are called upon to assign reasons for proposing a Constitution which puts it in the power of nine States to abolish the present inadequate, unsafe, and pernicious confederation! In the first case, he asserts that a majority ought to have the power of altering the government, when found to be inadequate to the security of the public happiness. In the last case, he affirms that even three-fourths of the community have not a right to alter a government which experience has proved subversive of national felicity. Nay, that the most necessary and urgent alterations cannot be made without the absolute unanimity of all the States!"

He next noticed Mr. Henry's objections to the power proposed to be given to Congress with regard to the militia, and to the power to raise and support armies. "The honorable member

sees great danger in the provision concerning the militia. This I conceive to be an additional security to our liberty, without diminishing the power of the States in any considerable degree. It appears to be so highly expedient, that I should imagine it would have found advocates even in the warmest friends of the present system. The authority of training the militia and appointing the officers is reserved to the States. Congress ought to have the power of establishing a uniform discipline throughout the States, and to provide for the execution of the laws, suppressing insurrections, and repelling invasions. These are the only cases in which they can interfere with the militia; and the obvious necessity of their having power over them in these cases must convince any reflecting mind. Without uniformity of discipline, military bodies would be incapable of action. Without a general controlling power to call forth the strength of the Union to repel invasions, the country might be overrun and conquered by foreign enemies. Without such a power to suppress insurrections, our liberties might be destroyed by domestic faction, and domestic tyranny be established.

"The power of raising and supporting armies is exclaimed against as dangerous and unnecessary. I wish there were no necessity of vesting this power in the general government. But, suppose a foreign nation to declare war against the United States, must not the general legislature

have the power of defending the United States? Ought it to be known to foreign nations, that the general government of the United States of America has no power to raise or support an army? Would not their knowledge of such a circumstance stimulate them to fall upon us? If, sir, Congress be not invested with this power, any powerful nation, prompted by ambition or avarice, will be invited by our weakness to attack us; and such an attack by disciplined veterans would certainly be attended with success, when only opposed by irregular, undisciplined militia."

To the argument drawn by Mr. Henry from the preamble of the Constitution, — "We, the people of the United States, do ordain and establish this Constitution," — and the changes he so repeatedly rang upon it, to prove that the scheme proposed was a consolidated government of the whole people of America as one integral mass, Mr. Madison gave the following lucid and irrefragable answer: "Who are parties to it? The people, — not the people as composing one great body, but the people as composing thirteen sovereignties. Were it, as the gentleman asserts, a consolidated government, the assent of a majority of the people would be sufficient for its establishment; and, as a majority have adopted it already, the remaining States would be bound by the act of the majority, even if they unanimously reprobated it. Were it such a government as it is suggested to be, it would be now binding on the people of this

State, without having had the privilege of deliberating upon it. But, sir, no State is bound by it, as it is, without its own consent. Should all the States adopt it, it will then be a government established by the thirteen States of America,—not through the *legislatures*, but by the *people* at large. In this particular respect, the distinction between the existing and proposed governments is very material. The existing system has been derived from the dependent, derivative authority of the legislatures of the States; whereas the present is derived from the superior power of the people."

Mr. Madison next came to consider the objections made to the power of direct taxation, proposed to be vested in the Congress of the United States. He showed, first from the reason and nature of things, that such a power is "indispensable to the existence of any efficient or well-organized system of government," and that any reliance whatever on requisitions upon the States would be dangerously delusive. "If," said he, "a government depends on other governments for its revenues,—if it must depend on the voluntary contributions of its members,—its existence must be precarious. A government which relies on thirteen independent sovereignties for the means of its existence is a solecism in theory, and a mere nullity in practice. Is it consistent with reason that such a government can promote the happiness of any people? It is subversive of

every principle of sound policy to trust the safety of a community with a government destitute of the means of protecting itself or its members. Can Congress, after the repeated, unequivocal proofs it has experienced of the utter inutility and inefficacy of requisitions, reasonably expect that they should be hereafter effectual or productive? Will not the same local interests and other causes militate against a compliance? Whoever hopes the contrary must ever be disappointed."

He then reviewed, with reference to the same question, the history of all the confederacies, ancient or modern, in which the central government was made dependent on the contributions of its several members in their corporate capacities,— the Amphictyonic, the Achæan, the Germanic, the Helvetic, the Batavian,— and showed that "all such confederacies have, in every instance, been productive of anarchy and confusion; ineffectual for the preservation of harmony; and a prey to their own dissensions and foreign invasions. I most earnestly pray," he added, "that America may have sufficient wisdom to avail herself of the instructive information she may derive from a contemplation of the sources of their misfortunes, and that she may escape a similar fate by avoiding the causes from which their infelicity sprang."

Turning, finally, to the lessons of American experience, he said, "If we take experience for our guide, we shall find still more instructive

direction on this subject. The weakness of the existing articles of the Union showed itself during the war. It has manifested itself since the peace to such a degree as admits of no doubt to a rational, intelligent, and unbiassed mind, of the necessity of an alteration: nay, this necessity is obvious to all America; it has forced itself on the minds of the people." Owing to the want of adequate powers in the hands of the Federal authority, he said, "the most intolerable and unwarrantable oppressions were committed on the people during the late war. The great enormity of those oppressions might have produced the most serious consequences, were it not for the spirit of liberty which preponderated against every consideration. A scene of injustice, partiality, and oppression, may bring heavenly vengeance on any people. We are now, by our sufferings, expiating the crimes of the otherwise glorious revolution.

"Is it not known to every member of this committee, that the great principles of a free government were reversed through the whole progress of that scene? Was not every State harassed? Was not every individual oppressed, and subjected to repeated distresses? Was it a proper form of government that warranted, authorized, or overlooked the most wanton deprivation of property? Had the government been invested with complete power to procure a regular and adequate supply of revenue, those oppressive measures would have been unnecessary. But, sir, can it be supposed

that a repetition of such measures would be acquiesced in? Can a government which stands in need of such measures secure the liberty, or promote the happiness or glory, of any country? If we do not change this system, consequences must ensue that gentlemen do not now apprehend."

Referring to the circular address of General Washington to the States at the close of the war, he said: "If other testimony were necessary, I might appeal to that which, I am sure, is very weighty, but which I mention with reluctance. At the conclusion of the war, the man who had the most extensive acquaintance with the nature of the country, who well understood its interests, and who had given the most unequivocal and most brilliant proofs of his attachment to its welfare, — when he laid down his arms, wherewith he had so nobly and successfully defended his country, — publicly testified his disapprobation of the present system, and suggested that some alteration was necessary to render it adequate to the security of our happiness. I do not introduce that great name to bias any gentleman here. Much as I admire and revere the man, I consider these members are not to be actuated by the influence of any man; but I introduce him as a respectable witness to prove that the articles of confederation are inadequate, and that we must resort to something else."

He concluded with these remarks: "The confederation is so notoriously feeble, that foreign nations are unwilling to form any treaties with us. They

are apprised that our general government cannot perform any of its engagements; but that they may be violated at pleasure by any of the States. . . . But, were this country united by proper bands, in addition to other great advantages, we could form very beneficial treaties with foreign States. This can never happen without a change in our system. Were we not laughed at by the minister of that nation from which we may be able yet to extort some of the most salutary measures for this country? Were we not told that it was necessary to temporize till our government acquired consistency?

"Let us recollect our conduct to that country from which we have received the most friendly aid. How have we dealt with our benevolent ally? Have we complied with our most sacred obligations to that nation? Have we paid the interest on our debt to her punctually from year to year? Is not the interest accumulating, while not a shilling is discharged of the principal? . . . Is this a situation on which America can rely for security and happiness? How are we to extricate ourselves? The honorable member told us we might rely on the punctuality and friendship of the States, and that they will discharge their quotas for the future. The contributions of the States have been found inadequate from the beginning, and are diminishing instead of increasing. From the month of June, 1787, to June, 1788, they have only paid two hundred and seventy-six thousand, six hundred

and forty-one dollars into the Federal treasury for the purpose of supporting the national government, and discharging the interest of the national debt, — a sum so very insignificant that it must greatly alarm the friends of their country. Suggestions and strong assertions dissipate before *facts* like these." [1]

Of this day's debate, we have an interesting contemporaneous account in a letter to General Washington from his nephew, Mr. Bushrod Washington, a member of the convention, written under the immediate impression of the scene. "Mr. Henry, on Thursday," he wrote, "called upon the friends of the proposed plan to point out the objections to the present Federal Constitution. This challenge, which was given with an appearance of great confidence, drew from the Governor [Ran-

[1] The extracts here given of Mr. Madison's remarks in the convention of Virginia, as well as those of Mr. Henry and other members, are cited from the "Debates," as taken down and published at the time by David Robertson of Petersburg. Mr. Madison's share in those debates was never revised by him either before or after their publication; nor is it to be supposed that the speeches of any of the other members were so revised by them, unless the first speech of Mr. Monroe, which bears the marks of very careful preparation, may have been written out or revised by him before it went to press. When, in 1827, Elliot was preparing a new edition of the Debates of the Virginia Convention, he wrote to Mr. Madison, and offered him the opportunity of revising and correcting his speeches in that body, hurriedly and imperfectly reported, as they had been, on the spur of the occasion, by Robertson. Mr. Madison, recognizing fully the many defects of these contemporary reports of his speeches, declined, nevertheless, to retouch them in any manner whatever; not deeming it fair to do so, after a lapse of forty years, when, from death and other causes, the same opportunity could not be equally enjoyed by all his colleagues who had participated in the debates with him. — See his letter to Jonathan Elliot, 16th November, 1827.

dolph] a very able and elegant harangue, for two hours and a half. . . . Mr. Madison followed, and with such force of reasoning, and a display of such irresistible truths, that opposition seemed to have quitted the field. However, I am not so sanguine as to trust appearances, or even to flatter myself that he made many converts. A few, I have been confidently informed, he did influence, who were decidedly in the opposition."[1]

Mr. Henry was too practised a disputant to show any sign of discouragement, or any abatement of his confidence and zeal. On the following day, he renewed the discussion, taking a still wider range in his observations, and animadverting, with no small degree of asperity, on the conduct and language of Governor Randolph, whose course in now advocating the acceptance of the Constitution, after having withheld his signature from it in the Federal Convention, rendered him peculiarly obnoxious to the displeasure of the persevering adversaries of the plan. This led to a spirited rejoinder by the Governor, in which, with his personal defence, that in its turn became aggressive, he combined an able defence of the Constitution from the new assaults directed against it.

During this episode of two days, Mr. Madison, as we learn from his correspondence at the time, was detained from his seat in the convention by a sharp indisposition. On the 10th of June, he resumed his attendance in time to hear the tem-

[1] See Sparks's Washington, vol. ix. p. 378

perate and well-considered exposition by his friend Monroe of the grounds on which he opposed the acceptance of the Constitution, without previous amendments. Like Colonel Mason, Mr. Monroe freely admitted the radical defects of the confederation, both in its structure and its powers. "I consider it," he said, "void of energy and badly organized. . . . I am strongly impressed with the necessity of having a firm, national government; but I am decidedly against giving the power of direct taxation, because I think it endangers our liberties. My attachment to the Union and an energetic government is such, that I would consent to give the general government every power contained in the plan, except that of direct taxation." To that power in the hands of the new government, the stress of his argument was, therefore, mainly directed, — intermingling observations on the organization of both the legislative and executive departments, which he thought were not guarded by sufficient checks, and a proper responsibility.[1]

Mr. Marshall and Mr. Nicholas followed Mr. Monroe in able arguments on the side of the Constitution, but more in answer to the multiform and protean attacks of Mr. Henry than the specific

[1] Among Mr. Monroe's objections to the constitution of the executive department was the supposed danger of the perpetual re-election of the president. "When once elected," he said, "he may be elected for ever." Both Colonel Mason and Mr. Grayson afterwards said, "He will be elected time after time, and continued in office for life." — For the views of Colonel Mason and Mr. Grayson, see Debates under date of the 17th and 18th of June.

objections of Mr. Monroe. On the following day, Mr. Madison, in the hope of recalling the debate from the wide and discursive range it had hitherto taken, to the order of discussion prescribed by the resolution of the convention, gave a close, compact, and luminous answer to the argument of Mr. Monroe on the question of taxation. He discussed it under distinct heads, responding to the objections which had been urged by the opponents of the power, and showed, first, that the power was necessary; secondly, practicable; thirdly, safe with respect to the public liberty; and, fourthly, economical of the public resources.[1]

[1] This speech is the only one of the many made by Mr. Madison during the session of the convention, for which he appears to have found time to make notes beforehand. As an additional example to those already furnished of his habit of a progressive and cumulative development of his subject, in which "the arguments rise naturally from one another," and which a celebrated English writer considers indispensable to both the beauty and convincing effect of a public discourse (Hume, Essay on Eloquence), we annex here this brief of Mr. Madison's speech; which the reader will doubtless find it an interesting study to compare with the speech as given in the published report of the debates of the convention: —

DIRECT TAXATION.

Necessary; practicable; safe; economical.

I. — Necessary.

1. For punctuality, — credit, — suppose a war between France and England, most to be feared, — free ships, free goods.
2. Conditional taxation (in event of non-compliance with requisitions) will be attended with failure, from —
3. Distrust of concurrent exertions among the States who will deliberate.
4. Some States less in danger and less willing to exert themselves.
5. Contests between Congress and the States.
6. Effect of being held out as a punishment; and States on the side of the people. Representatives of particular States will oppose, first in Congress, then elsewhere.
7. Case of partial payments within time.
8. Consequence will be to throw whole burthen on imports and Southern States.
9. Imports not enough for the ne-

In recurring to this model argument of Mr. Madison, the reader cannot fail to be struck with the singular foresight — the gift only of an accomplished statesman — with which he prefigured the gigantic war, which was soon to break out between England and France, and its resulting consequences to the United States. That war, he well knew, must most gravely compromise the rights and interterests of America as a neutral power; and from its foreseen approach he deduced the necessity of giving the control of ample financial resources to the government charged with the guardianship of the national honor and safety. This foresight of Mr. Madison is the more remarkable from its contrast to the easy credulity of the Prime Minis-

cessary revenue now, — will decrease in war, and by home manufactures.

10. It will better secure responsibility when Congress has, not to fix sums only, but to find means.

II. — Practicable.

1. Ten or fifteen members, enough for the purpose of laying taxes judiciously, from this State.
2. Aid of State laws.
3. Increase of mutual knowledge.
4. Lands — polls — property.
5. Uniformity not essential — England and Scotland — local customs.
6. Concurrent collections, as both act for people.

III. — Safe.

1. To public liberty — representatives of large districts, as London, &c.
2. Comparative dependence and influence of general and State governments.
3. No member of State government elected by general government.
4. President elected under influence of State legislatures.
5. Senate appointed by State legislatures. Colonel Monroe's idea, and inconsistency here.
6. House of Representatives attached to States more than Senate.
7. People of the States attached to the State governments.
8. Compare number of appointments.
9. Compare powers.
10. Powers of Congress. Some are only those of the confederation substantiated. Case of Congress during paper money.

IV. — Economical.

1. As to customs.
2. As imposed by one body of moderate numbers, in place of 1,500 or 2,000 members composing different State legislatures.
3. As less mutable, and less likely to encourage injurious speculations on changes of public measures.

ter of England himself, who, three years later, — in the outset of the year, which, ere its close, witnessed the commencement of the titanic contest, that, for the fifth of a century, convulsed Europe and the world by sea and by land, — complacently declared in parliament that "there never was a time when we might more reasonably expect a *durable* peace than at the present moment."[1]

Mr. Madison's effort to recall the debate to a more regular and orderly train was fruitless. Mr. Henry insisted on the privilege of "discussing at large;" and Colonel Mason, who had taken no part in the debates of the convention for a week past, now entered again into the discussion, freely mingling sarcasm with argument, and adding "a dash of that biting cynicism," with which, we are informed by one of the most intimate as well as distinguished of his contemporaries,[2] it was his wont to season his discourses, when chafed by opposition.

He was followed by Mr. Grayson, on the same side of the question, in a speech of great ingenuity and ability, continued through two days. The position of Mr. Grayson was strictly *sui generis*. He acknowledged the defects of the confederation, but said "they are inseparable from the nature of such governments, and cannot be removed but by death. . . . I admit," he added, "that coercion is

[1] See speech of Mr. Pitt in House of Commons, the 17th of February, 1792.

[2] Mr. Jefferson. — See his Writings (Rand. edit.), vol. i. p. 33.

necessary in every government, in some degree; that it is manifestly wanting in the present government [the confederation]; and that the want of it has ruined many nations." He was, nevertheless, in favor of adhering to this defective and dangerous system (if it should be thought practicable to sustain any system on the basis of the capacity of the people for self-government), and of adding to its existing powers that of the regulation of commerce alone. If, on the other hand, the hypothesis of self-government be not sustainable, then, he declared, "I would have a president for life, choosing his successor at the same time; a Senate for life, with the powers of the House of Lords; and a triennial House of Representatives, with the powers of the House of Commons in England." His creed was epigrammatically summed up in these words: "I prefer a total consolidation to a partial one, but a Federal government to either."

His great objection to the proposed Constitution, he said, was that it would enable the carrying States, represented by him to be a majority of the States composing the Union, to unite in the pursuit of their peculiar interests, "which were strikingly different from those of the productive States; that our commodities would be transported upon their own terms; and that every measure will have for its object their particular interest." He apparently forgot, that the very power by whose instrumentality these apprehended results were to be accomplished,

if accomplished at all, was the power of regulating commerce, which his own plan, so far as he developed it, proposed to confer upon the existing confederation without qualification or restriction.

After a speech from Mr. Pendleton, marked by all the dignity of his character and the wisdom of his experience, Mr. Madison rose for the purpose of answering more particularly the arguments of Mr. Grayson. Reviewing them one by one, he came at length to that on which the speaker himself laid the greatest stress, — a combination of the carrying States, wielding the power of a majority, to promote the interest of their leading pursuit, navigation, at the expense of the agricultural and productive States. Mr. Madison denied that the carrying States formed, or were likely to form, a majority of the Confederacy. All would admit, he said, that the five Southern States were non-carrying States. To them were to be added New Jersey and Connecticut at least, which received their foreign supplies through New York; and also Delaware and a large part of New Hampshire. All the new States to arise in the West would likewise be non-carrying States. And thus the arguments of Mr. Grayson, built on the assumption of the carrying States forming a majority of the Union, must, he said, "fall to the ground."

The discussion was continued, on the side of the opposition, by Mr. Henry, who, giving the reins as usual to his discursive genius, roamed over a wide field of criticism and denunciation.

A pointed and vigorous reply from Mr. Madison closed not only the debate of the day, but the *general* discussion on the merits of the Constitution, which had now occupied the attention of the convention for nearly a fortnight. Before proceeding, however, to the examination of the Constitution clause by clause, the convention, on the motion of Mr. Henry, resolved itself into a committee of the whole for the purpose of receiving information from those members who had been delegates in Congress concerning the proceedings of that body on the subject of the Mississippi.

Mr. Henry, in pursuance of his policy of arraying every interest, local, personal, or general, in opposition to the new Constitution, had, at an early day of the convention, denounced the loss of the navigation of the Mississippi as a certain consequence of its adoption, and referred mysteriously to those transactions in Congress relating to Mr. Jay's negotiations with Spain, of which we have heretofore given a detailed account.[1] There were fourteen representatives in the convention from the district of Kentucky, whose interests and feelings were peculiarly involved in this important question, and whose votes on the acceptance or rejection of the Constitution would, doubtless, be governed by the opinions they should form as to the probable operation of the proposed system on its solution.

Mr. Monroe and Mr. Grayson, both of whom

[1] Ante, chap. XXIV.

had been members of Congress during the agitation of Mr. Jay's project, responded in committee of the whole to Mr. Henry's call, and gave a full and minute detail of the proceedings of Congress on the subject. They both dwelt on the fact that seven States had, at one time, voted in favor of the proposal to surrender to Spain in a commercial treaty the exclusive navigation of the Mississippi River for a period of twenty-five or thirty years. They both expressed the opinion that it was the fixed policy of those States to discourage the settlement of the valley of the Mississippi by closing its great artery of trade, and thus secure to their section a lasting preponderance of population and political power; and that, as only two-thirds of the senators *present* were required by the new Constitution for the ratification of treaties, those seven States, and even a smaller number, would, under its provisions, be enabled by the absence of senators to conclude a treaty for bartering away the navigation of the river; while, under the existing confederation, the concurrence of *nine* States was invariably demanded for the consummation of a treaty.

Mr. Madison, who was far better acquainted with the actual state and prospects of the Spanish negotiation than either Mr. Monroe or Mr. Grayson, — having been more recently as well as more prominently engaged in persevering endeavors to thwart it, as has been abundantly shown in the

course of this narrative,[1] — felt himself restrained. by a proper regard for the rules of Congress, from a public exposure of proceedings and negotiations on which the injunction of secrecy still rested. He contented himself, therefore, with showing, that, in the regular and normal operation of the two systems, there would be more security for the navigation of the Mississippi under the Constitution than under the confederation; that, if all the senators were present, as it ought to be presumed they would be on a question of so much importance, nine States would be as necessary for the confirmation of a treaty under the one system as the other, with the additional security afforded by the Constitution of the required concurrence of another and independent department, — the executive; and, if absences of senators were to be taken into the account, why was it to be presumed that those absences would all be on the side of Southern senators so vitally concerned, and none on the part of the North?

He also contended that the true and permanent interest of the Northern States was opposed to the occlusion of the Mississippi, as they were, for the most part, carrying States, and as such deeply interested in the agricultural development and prosperity of the Western country. He referred to the fact, already generally known, that of the seven States who had, at one time, voted in Congress for the temporary surrender of the

[1] Ante, chap. xxvi.

navigation of the Mississippi to Spain, two of them, New Jersey and Pennsylvania, had since, by formal instructions or change of representatives, withdrawn their countenance from the scheme; and, he added, "if he were at liberty, he could develop some circumstances which would convince the convention that this project would never be revived in Congress, and that no danger, therefore, is to be apprehended."

Notwithstanding this clear and authentic exposition given by Mr. Madison, the statements and opinions of Mr. Grayson and Mr. Monroe furnished to Mr. Henry, with his rare dramatic and oratorical powers, ample materials for the creation of a panic among the representatives of the district of Kentucky. Nothing could be more imposing than the dignity, self-respect, and magnanimity exhibited by Mr. Madison through the whole of this extraordinary scene. Of all the public men of America, he was the one who had been the most persevering, the most inflexible, and the most powerful champion of the freedom of the Mississippi, — in Congress from 1780 to the day of this inquisitorial proceeding, — in the legislature of Virginia from the close of the War of the Revolution, — in his unremitting correspondence, before and since the Peace, with public characters at home and abroad.[1] While two

[1] In justification of these assertions, see ante, vol. I. pp. 237–253, 577–580, and 583, 584; and this volume, pp. 113, 114, 119, 137–143, and 191–202.

gentlemen, who had offered in Congress a proposition of compromise and concession against which he protested at the time as descending from the high ground of principle on which, in his opinion, the right ought to be inflexibly maintained,[1] were now put forward as its special advocates and defenders, and himself distrusted, he forbore any comment on their course, or any reference to his own. He stood erect in the consciousness of his integrity and the consoling recollection of his faithful exertions in a great public cause, looking with confidence to the revelations and events of the future to justify the opinions he now expressed to the convention.

These revelations and events were not slow in their development. The resolutions of Congress of the 16th of September, 1788, affirming "the clear and essential right of the United States to the free navigation of the Mississippi;" and the negotiations promptly entered upon by the new government for its establishment, which terminated in the treaty of 1795, — gave to the winds all the terrible predictions that had been uttered as to the fatal effects of the adoption of the Constitution on the security of this vital interest. It was, indeed, by virtue of its adoption and the new vigor it gave to the national arm, that the United States were at last enabled to enforce a reluctant recognition of a right which had been for so long a period, but in vain, asserted under the inefficient *régime* of the confederation.

[1] See ante, chap. xxiv. p. 120.

On the very day of this proceeding in the convention, — the 13th of June, — Mr. Madison wrote to General Washington, giving him an account of it, and of the general temper of the convention as affecting the prospects of the final issue of their deliberations.

"Appearances at present," he said, "are less favorable than at the date of my last. Our progress is slow, and every advantage is taken of the delay to work on the local prejudices of particular sets of members. British debts, the Indiana claim, and the Mississippi, are the principal topics of private discussion and intrigue, as well as public declamation. The members who have served in Congress have been dragged into communications on the last, which could not be justified on any other occasion, if on the present. There is reason to believe that the event may depend on the Kentucky members, who seem to lean more against than in favor of the Constitution. The business is in the most ticklish state that can be imagined. The majority will certainly be small, on whatever side it may finally lie; and I dare not encourage much expectation that it will be on the favorable side."[1]

[1] Colonel Mason sounded the factitious alarm concerning the resuscitation of the Indiana claim, if the Constitution should be adopted. "Twenty thousand families of good citizens in North-western Virginia," he said, "would be ousted of their lands by this claim, if the Constitution should be adopted." (See his speech, 11th June.) The British debts, and the loss of the Mississippi, were the thunder of Mr. Henry. Among other topics employed by him to alarm the fears of the convention, he gravely contended, that, if the Constitution

On the day following the date of this letter, the convention, in conformity to its original resolution, entered upon the consideration of the Constitution, *clause by clause;* and, from that moment, the scales of victory gradually inclined in favor of the Constitution. By this order of discussion, its opponents were brought down from the airy regions of declamation and fancy, and forced to grapple with its advocates on the *terra firma* of a written text.

were adopted, "Virginia would be compelled to pay her proportion of the depreciated continental money in circulation at the close of the war, shilling for shilling;" and also that the Southern States would be compelled to furnish troops for the common defence, "in proportion to the number of their blacks as well as whites," assuming (what there was not the slightest warrant for in the Constitution) that troops were to be apportioned among the States like direct taxes. (See his speech of 12th of June.) Both he and Colonel Mason united in depicting an *aristocracy* of the wealthy and the *well-born* trampling on the rights and interests of the masses of the people as the certain and hateful growth of the Constitution. (See what was said by Colonel Mason, in his speech of 11th June particularly, and by Mr. Henry, in the debates *sparsim.*)

These appeals to the jealousies of the middling and lower classes were nobly rebuked by Mr. Pendleton. "The worthy member" [Mr. Henry], he said, "professes himself an advocate of the middling and lower classes of men. I profess to be a friend to the equal liberty of all men, from the palace to the cottage, without any other distinction than between the good and the bad. . . . I consider every man *well-born* who comes into the world with an intelligent mind and with all his parts perfect. I am an advocate for fixing our government on true republican principles, giving to the poor man full liberty in his person and property. Whether a man be great or small, he is equally dear to me. I wish, sir, for a regular government, in order to protect those honest citizens who have been referred to, — the industrious farmer and planter. . . . Suppose a poor man becomes rich by honest labor, and increases the stock of the public wealth, shall his reward be the loss of that liberty he set out with? Will you take away every stimulus to industry by declaring he shall not retain the fruits of it? . . . In my mind, the true principle of republicanism, and the greatest security for liberty, is *regular government.*" — Speech of Mr. Pendleton, in convention of Virginia, on the 12th of June, 1788.

Lists were set up, and the combatants restrained to definite issues in a prescribed field of controversy. In this manly and noble encounter of intellects, Mr. Madison bore a peculiar and distinguished part. He was the only member of the Federal Convention present (except Judge Blair, who took no part in the debates) that had given the responsible sanction of his signature to the Constitution; and to him, therefore, appeals were constantly made for explanation and defence of its provisions.

It thus happened, that, in the very first day of the debate on the text of the Constitution, he was called up, and spoke as many as thirteen times; and was successively engaged the same day in animated discussions with all the leading adversaries of the Constitution, — Mr. Henry, Colonel Mason, Mr. Grayson, and Mr. Monroe. His contest with Mr. Henry — on the clause respecting the qualified power given to Congress over the militia — consisted of three successive rounds. A hand-to-hand conflict with a veteran of the bar and of the forum, it presents a remarkable specimen of the readiness, vigor, and resources of Mr. Madison as a debater. The struggle between them was renewed the following day, with equal, if not yet greater spirit, and with the like honorable result to the unprofessional combatant. The characteristic manner of each was strikingly exemplified, — the one grand, swelling, vague, specious, captivating; the other close, searching, lucid,

earnest, convincing to the head and to the heart.[1]

During the first four days of the discussion on the text of the Constitution, the labors of Mr. Madison in debate, though he was still suffering under the effects of his recent indisposition, continued without abatement. He spoke thirty-five times in the course of those four days; and in no instance did his efforts exhibit the slightest remission of intellectual vigor. His energies and his spirits were sustained by the effect now manifest of bringing the vague objections of the opponents of the Constitution to the test of a direct, practical discussion on the text of the instrument. On the 18th of June, he wrote to General Washington in the following cheerful terms: —

"No question, direct or indirect, has yet been taken by which the state of parties could be determined. Of course, each is left to enjoy the hopes resulting from his own partial calculations. It is probable the majority, on either side, will not exceed three, four, five, or six. I indulge a belief, that, at this time, the friends of the Constitution

[1] The favorite type by which the eloquence of Mr. Henry has been represented is the mountain torrent dashing magnificently from cataract to cataract, or the ocean lashed into fury by the strife of the elements. [See Wirt's Life of Henry, p. 295.] That of Mr. Madison may find its appropriate image in a flowing and abundant river, fertilizing the regions through which it passes; conveying on its bosom the rich productions of nature and of art, and reflecting with clearness and beauty the various objects on its banks.

Though deep, yet clear; though gentle, yet not dull;
Strong without rage; without o'erflowing, full.

have the advantage in point of numbers. . . . I find myself not yet restored, and extremely feeble."

The detailed discussion of the Constitution was continued four days longer, in the course of which, while Mr. Madison bore, as usual, the leading and distinguished part assigned him by general consent,[1] important re-enforcements of argument and eloquence were brought to his aid by his able coadjutors, Mr. Pendleton, Mr. Marshall, Governor Randolph, and Mr. Nicholas. On the 23d day of June, the debate on the text of the Constitution was brought to a close, with indications still cheering to its friends, and depressing to its opponents. In the uncomfortable state of feeling produced by the prospect of defeat, Colonel Mason held out *in terrorem* the idea of popular resistance to the Constitution, if it should be adopted, and said "he trusted gentlemen would pause before they decided a question which involved such awful consequences."

Mr. Madison gave the following account of the proceedings of this day in a letter of the same date to General Washington: —

"We got through the Constitution by paragraphs

[1] It was in the course of this debate on the text of the Constitution, while the convention was engaged in discussing the judiciary department, that Mr. Madison interrupted Colonel Mason, and, with a warmth of manner and expression not usual with him, "*demanded an unequivocal explanation*" with regard to a sweeping declaration made by the latter, — that a national, consolidated government was the object of many members of the Federal Convention. Colonel Mason *promptly disclaimed* any allusion to Mr. Madison, and acquitted him, in the fullest manner, of a participation in such views.

to-day. To-morrow, some proposition for closing the business will be made. On our side, a ratification, involving a few declaratory truths not affecting its validity, will be tendered. The opposition will urge previous amendments. Their conversation to-day seemed to betray despair. Colonel Mason, in particular, talked in a style which no other sentiment could have produced. He held out the idea of civil convulsions as the effect of obtruding the government on the people. He was answered by several, and concluded with declaring his determination, for himself, to acquiesce in the event, whatever it might be. Mr. Henry endeavored to gloss what had fallen from his friend; declared his aversion to the Constitution to be such that he could not take the oath; but he would remain in peaceable submission to the result."

On the following day,— the 24th of June,— Mr. Wythe, who had hitherto acted as chairman in committee of the whole, descended from the chair; and, after a few observations, conceived in a spirit of great moderation and wisdom, on the fatal defects of the confederation, the general excellence of the system proposed to be substituted for it, and the extreme danger of a dissolution of the Union from insisting on previous instead of subsequent amendments, submitted a proposition that the convention do at once ratify the Constitution, and that the ratification be accompanied with a recommendation to Congress of such amendments as may be deemed expedient, to be acted upon in the mode

prescribed by the Constitution itself. Mr. Henry then rose, and depicting, in all the vivid colors of his eloquence, what he deemed the dangers of an immediate and unconditional ratification of the Constitution, offered, as a substitute for Mr. Wythe's proposition, a resolution declaring, that, *previous* to the ratification of the Constitution by Virginia, a Bill of Rights — consisting of twenty articles, and a schedule of amendments to the Constitution, of about the same number, — ought to be referred by the convention to the other States for their consideration and action.

On these rival propositions, an earnest and solemn debate arose, and occupied the convention for two days. All the leading opponents of the Constitution, including Governor Harrison and Mr. Tyler, took part in it. On the side of the Constitution, — with the exception of a spirited and patriotic speech from Mr. Innes, whose official duties as attorney-general of the State had prevented him from hitherto taking any part in the proceedings of the convention, — the discussion was conducted almost exclusively by Mr. Madison, Governor Randolph, and Mr. Nicholas. Mr. Henry spoke thrice, putting forth all his powers, and exerting them with their utmost theatrical effect, enhanced by the occurrence of a thunderstorm at the moment, when, in an animated apostrophe, he invoked the benignant spirits of another world as the interested spectators of their proceedings. Mr. Madison spoke thrice also, and with

great solemnity and earnestness, but in a calmer and more quiet tone.

"It is a most awful thing," he said, "that depends on our decision,—no less than whether the thirteen States shall unite freely, peaceably, and unanimously for the security of their common happiness and liberty, or whether every thing is to be put into confusion and disorder. . . . If we propose conditional [or previous] amendments, I entreat gentlemen to consider the distance to which they throw the ultimate settlement. They cannot but see how easy it will be to obtain subsequent amendments. . . . There are uncertainty and confusion on the one hand; order, tranquillity, and certainty on the other. Let us not hesitate to elect the latter alternative."

The convention seemed to feel, like the prophet of old, that the power was not in the "great and strong wind which rent the mountains and broke in pieces the rocks," nor in the earthquake, nor yet in the fire; but, "after these, a still, small voice," which spoke the counsels of wisdom and truth. On putting the question, there were but eighty votes in favor of Mr. Henry's proposition to eighty-eight against it; and Mr. Wythe's proposition, in favor of immediate ratification, was then carried by a vote of eighty-nine to seventy-nine.

A committee, consisting of Mr. Randolph, Mr. Nicholas, Mr. Madison, Mr. Marshall, and Mr. Corbin, was appointed to prepare a suitable form of ratification. According to the intimation contained

in Mr. Madison's letter to General Washington, already cited, and pursuing, with slight modifications, the phraseology of Mr. Wythe's proposition, the form reported by the committee, after re-affirming the fundamental principle of the Declaration of American Independence, — that the powers of government are derived from the consent of the people, and may be resumed by them whensoever perverted to their injury and oppression, — set forth that every power, not granted by them in the Constitution, remains with them and at their will; and that no right of any denomination can be cancelled, abridged, restrained, or modified by the government, or any department thereof, except in those instances in which power is given by the Constitution for the purpose. It concluded by solemnly announcing the ratification of the Constitution by the convention, in the name and on behalf of the people of Virginia, and that "the said Constitution is *binding* upon the said people, according to an authentic copy thereto annexed." This form of ratification was agreed to by the convention, and, with the Constitution embodied, was on the following day signed by the president of the convention. A Bill of Rights, with a series of amendments, was afterwards presented by another committee, agreed to by the House, and "recommended to the consideration of Congress, to be acted upon according to the mode prescribed in the fifth article of the Constitution."[1]

[1] A very extraordinary attempt has been sometimes made to show, that Virginia, by the language of her ratification of the Constitution,

Thus terminated, after a session of nearly four weeks, a convention second in importance only to that which produced the Constitution. Memorable

reserved to herself the express right to secede from the compact, whensoever, in her judgment, it should be proper to do so. That no such reservation was or could have been contemplated by the convention is apparent from the nature, as well as from the contemporaneous history, of the transaction. The clause of the ratification relied on to support this theory is the following: "That the powers granted under the Constitution, being derived from the consent of the *people of the United States*, may be resumed by them, whensoever perverted to their injury or oppression." This clause is identical in principle, and almost in language, with the universal canon of natural and inherent right proclaimed in the Declaration of American Independence, in these words: "Governments derive their just powers from the consent of the governed; and, whenever any government becomes destructive of the ends for which it was established, it is the right of the people to alter and abolish it, and institute a new government." That nothing more was intended by the language used in the ratification of the Constitution by Virginia, than simply to re-affirm this fundamental maxim of natural right, is sufficiently shown by the letter of Mr. Madison to General Washington, cited in the text, where, he says, the day before the ratification was brought in, that it will be prefaced with "a few *declaratory* truths, *not affecting its validity*," or, as in a letter to Colonel Hamilton, dated one day earlier, "some plain and *general* truths, that *cannot affect the validity of the act.*"

But, farther, when five or six weeks later, a positive proposition was made in the convention of New York for "reserving to that State a right to withdraw from the Union," in certain contingencies, — a proposition decisively rejected even in that ultra anti-Federal State, — Mr. Madison, in answer to a letter from Colonel Hamilton, not only declared that such a reservation would be repugnant to the nature of the compact itself, but added that "the idea of reserving a right to withdraw was started at Richmond, and considered as a *conditional* ratification, which was itself abandoned, as worse than a rejection." (See post, chap. 36, p. 627.) Mr. Madison, doubtless, here alluded to a suggestion originating with Mr. Richard Henry Lee, and earnestly pressed by him upon Colonel Mason, in a letter dated the 7th of May, 1788, but which the latter never ventured to bring formally before the convention. (See Life of Richard Henry Lee, vol. II. p. 88; and idem, p. 93, for a similar letter to Judge Pendleton.)

The truth is, that the founders of the Constitution having, in its organization and structure, provided every possible security, consistent with the nature of popular government, against the abuse and perversion of power, and super-

as it was for its results and for the superior abilities of the many distinguished men who took part in its discussions, it was hardly less memorable for the stirring spectacle it presented of an individual competition of talents, noble and lofty in its character, between two of the public men of Virginia, differing widely in their respective gifts and attainments, but each of the highest order in his own line of excellence. We have now before us a letter written in 1857 by a gentleman in his ninetieth year, the only surviving witness, probably, at that

added a guarantee for the public liberty, which no other Constitution possessed, in the jealous guardianship of the State governments whose independent existence was sacredly preserved, they thought the rest might well be left to that supreme and irrepealable law of nature, — the right of resistance to oppression, paramount to all written constitutions, — rather than attempt the hitherto unprecedented, if not unnatural, task of introducing into the Constitution a provision for its own dissolution. The views which presided in the formation of the Constitution were thus lucidly summed up by Mr. Madison, forty years after its adoption: —

"In the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses, rendering non-resistance a greater evil than resistance and revolution, there can remain but one resort, — the last of all, — an appeal from the cancelled obligations of the constitutional compact to original right, and the law of self-preservation. This is the *ultima ratio* of all governments, whether consolidated, confederated, or a compound of both." — Letter to Edward Everett, August, 1830.

The distinguishing characteristic of the American system consists, not only in the number of checks its complex structure supplies to guard against the occurrence of those "usurpations and abuses," which, when they occur, render the last resort necessary and justifiable, but also in the peculiar machinery and resources it affords for instituting and making effectual that last resort (if it should unfortunately become necessary), by means of pre-existing State governments, with complete, independent organizations, civil and military. — See this idea impressively developed by Mr. Jefferson, in his letter to Destutt Tracy (the commentator of Montesquieu), dated 26th January, 1811; as well as by Mr. Madison, in the 46th No. of the "Federalist."

time of the great contest, recalling, with the vivid enthusiasm of youth and with faculties undimmed by age, the impressions which the scene had made upon him.

"At the time of the convention," he says, "I was a stripling, and clerk in one of the public offices, and could of course only attend the debates at intervals snatched from the duties of the office. But the impressions made by the powerful arguments of Madison and the overwhelming eloquence of Henry can never fade from my mind. I thought them almost supernatural. They seemed raised up by Providence, each in his way, to produce great results: the one, by his grave, dignified, and irresistible arguments to convince and enlighten mankind; the other, by his brilliant and enrapturing eloquence to lead whithersoever he would. Although there were other brilliant stars in the convention, such as Pendleton, Wythe, Mason, &c. &c. &c., the discussion, after a few days, was narrowed down very much to Mr. Henry and Mr. Madison. They were both, at all times, great and interesting; but the convention yielded gradually to the convincing and irresistible arguments of Madison, and adopted the Constitution. These two eminent men seemed ever deeply impressed with the magnitude of the issues before them, and each to labor with his whole strength and energy to accomplish the object he had in view, — the one the adoption, the other the rejection, of the Constitution."

The result of this memorable contest is not without instruction to the candidates for a true public fame. However brilliant and dazzling the triumphs of the gifted popular orator, the eloquence of reason and conviction asserts its legitimate empire when heard in senates and deliberative bodies sitting on the grave questions of State. Eloquence, indeed, has been called the art of persuasion; but conviction is often the surest, as well as lawful, road that leads to persuasion. A great authority has said that dialectics is the foundation of the art of persuasion; and to know how to convince, and to enforce conviction, is to be eloquent.[1] Truth honestly and earnestly presented, with the accessories of accumulated and various knowledge, of lucid reasoning, of a graceful and impressive diction, strengthened by the moral power of virtuous and noble sentiments, exerts an irresistible influence upon the heart as well as the mind of man. All these Mr. Madison possessed, and in an exalted degree.

Owing to the difference of manners and institutions, it is difficult to find an apt parallel to his style of eloquence among the statesmen and orators of antiquity. But, in the land from which the lan-

[1] Aristotle on Rhetoric. — A great modern master of written eloquence, pursuing the idea of Aristotle, has said as pithily as justly, "True eloquence acts upon the soul and reaches the heart by speaking to the understanding." "Pour ceux dont la tête est ferme, il faut des choses, des pensées, des raisons. Il faut agir sur l'âme et toucher le cœur en parlant à l'esprit." — See the admirable discourse of Buffon on the occasion of his reception by the French Academy.

guage and civic usages of America are derived, a contemporary delineation of the manner of Bacon as a public speaker might seem to have been drawn, in anticipation, for the future transatlantic statesman. "There happened in my day," says the famous Ben Jonson, "one noble speaker, who was full of gravity in his speaking. No man ever spoke more neatly, more pressly, more weightily; or suffered less emptiness, less idleness, in what he uttered. No member of his speech but consisted of its own graces. His hearers could not cough or look aside from him without loss. He commanded where he spoke, and the fear of every man that heard him was that he should make an end." To this attractive portrait of Bacon as a speaker, if we add, with kindred graces of eloquence, the noble integrity, the practised wisdom, and profound constitutional learning of Somers, whose career that of Mr. Madison in so many points resembled, we shall have attained the most perfect idea that comparison can give of the powers and accomplishments of the successful defender of the Constitution before the convention of Virginia.

NOTE.

Chief Justice Marshall, towards the close of his life, being asked which of the various public speakers he had heard — and he had heard all the great orators, parliamentary and forensic, of America — he considered the most eloquent, replied, "Eloquence has been defined to be the art of persuasion. If it includes persuasion by convincing, Mr. Madison was the most eloquent man I ever heard." Mr. Jefferson, as we have already seen (vol. I. p. 172), speaking of the peculiar and consummate powers displayed by Mr. Madison as a parliamentary debater, — in the Federal Convention, in the convention of Virginia, and in the Congress of the

United States, — declared him "the first of every assembly of which he was a member." Mr. Gallatin, who served with him in the House of Representatives of the United States during the memorable and most important sessions of 1795–96 and 1796–97, in which he himself was a most distinguished actor, recalling, in the evening of his days, those who had been and were most eminent in the deliberative assemblies of the nation, pronounced Mr. Madison to be, in his judgment, the ablest man that ever sat in the American Congress.

CHAPTER XXXVI.

Convention of New Hampshire re-assembles, and ratifies Constitution — This Fact not known to Convention of Virginia, at Time of its Action — Brief Review of Leading Objections urged against Adoption of the Constitution — Consolidation — Aristocracy — Objections viewed in Light of Experience, as well as Philosophy — Testimony of De Tocqueville — Actual Working of the Constitution the reverse of Aristocratic — Power of mere Numbers — Warning of Jefferson — Rejoicings at Acceptance of Constitution by Virginia — Convention of New York — Divisions in that Body — Opposition to Constitution headed by Governor Clinton and Messrs. Yates, Lansing, and Melancthon Smith — Its Leading Advocates, Hamilton, Jay, Chancellor Livingston, and Duane — Large Majority of Convention opposed to Constitution — Expedients to obtain a Ratification — Right to secede, in certain Contingencies, proposed — Strong Protest against it in Letter from Mr. Madison to Colonel Hamilton — Call of another Convention agreed to as Price of Ratification — Deprecated by General Washington and Mr. Madison — Signal for Renewed Opposition to the Constitution in Pennsylvania, North Carolina, and Rhode Island — Legislature of Virginia, under Lead of Mr. Henry, recommences War upon the Constitution — New York gives no Vote in Presidential Election, and fails to appoint Senators during First Session of Congress — Proceedings of Congress for putting New Government into Operation — Efforts of Colonel Hamilton and his Colleagues, to obtain Seat of Government for New York, finally succeed — Letters of Mr. Madison to General Washington on this Subject — Correspondence between Mr. Madison and Mr. Jefferson on Bill of Rights — Secret History of Opposition to the Constitution in certain Quarters — Proposed Amendments — Mr. Madison's Opinions on the Subject — Mr. Henry carries Resolutions through Legislature of Virginia for Call of another Convention — Letter of Colonel Carrington to Mr. Madison,

giving an Account of these Proceedings — Friends of Mr. Madison put him in Nomination for Senate of United States — His Preference for House of Representatives — Letter on the Occasion to Governor Randolph — Course of Mr. Henry in the Senatorial Election — Endeavors to defeat Mr. Madison's Election to House of Representatives by *gerrymandering* his Congressional District — Animated Canvass between Mr. Madison and Mr. Monroe for Congress — Mr. Madison elected — General Result of the Elections in Virginia.

The convention of New Hampshire, which adjourned, as we have seen, in February, 1788, to meet again on the third Wednesday in June, reassembled at the appointed time, and, on the 21st day of that month, ratified the Constitution by a vote of fifty-seven to forty-six. This, however, was not known to the convention of Virginia, when, on the 25th day of June, it pronounced its final decision in favor of ratification; so that its determination was taken under a full sense of the responsibility involved in the consideration, that on its voice alone might depend the momentous question of the establishment of the Constitution as an operative system of government by the concurring votes of nine States, which was required for the purpose. The establishment of the Constitution being now secured by the accession of one more than the requisite number of States, we are naturally led to pause for a moment, and consider coolly the weight of the objections put forward with so much zeal at the time against its adoption.

The leading objections urged against it in the convention of Virginia, as shown by the record of its debates, — and the same were urged elsewhere,

— rested on supposed dangers to the public liberty from two sources: first, *consolidation*, or the annihilation and absorption of the State governments by the central authority; secondly, *aristocracy*, or the subversion of the equal rights of the masses of the people by undue power placed in the hands of the few. In regard to the first, it was said that the State governments would be swallowed up, or reduced to insignificance, having nothing left for them to do but "to take care of the poor, make and repair highways, erect bridges, and so on;" with respect to the second, that the very provision made in the Constitution for the representation of the people would "lead to an aristocracy, instead of supporting democratical principles."[1]

What has been the verdict of experience upon both of these objections? Every impartial student of American history must say, that down to the present time,[2] embracing seventy years of varied and eventful experience, whatever tendencies have

[1] The language cited in the text was that of Mr. Henry in his speeches of the 9th and 12th of June. The same themes were dwelt on habitually by him, and were frequently and warmly enforced by Colonel Mason and Mr. Grayson. Mr. Henry is supposed to have very much modified, if not abandoned, his early objections to the Constitution, after witnessing its practical operation; which he did for a period of ten years, and, towards the close of his life, became a zealous supporter of the Federal government in some of its strongest and most questionable exertions of power. Colonel Mason and Mr. Grayson died too soon — the latter in March, 1790, the former in October, 1792 — to have had the opportunity of revising their opinions by the lights derived from the actual working of the Constitution.

[2] The observations here made were written previous to the unhappy intestine convulsion of 1861–1865, and must be understood, therefore, as referring to the regular peaceful operation of the Constitution, under the direction of its own inherent and salutary princi-

been shown, at certain periods, to encroach on the province of the State governments, the latter have maintained their full efficiency and salutary vigor, and evinced an inherent power to vindicate their rightful prerogatives. In the many fierce conflicts of interest and opinion to which American institutions have been subjected during that time, it has been demonstrated, to the entire justification of the views asserted by the advocates of the adoption of the Constitution, that the vital and predominant force of the system, in its regular and normal operation, abides in the State governments. On this once much-litigated point, the testimony of a most enlightened and impartial foreign observer, who combined with the profound speculations of his countryman Montesquieu the practical philosophy of Locke, carries with it a decisive and irresistible weight.

After a profound analysis of the constitutional allotment of power between the States and the Union, he says: "The *Union* is a vast body, which presents no definite object to patriotic feeling. The forms and limits of the *State* are distinct

ples. Whether the perturbation of its orbit, which has arisen from that unnatural and deranging influence, is likely to survive the cause, and become permanent, is a question whose solution is hidden in the future. It does not fall within the province of the writer to attempt to lift the veil. But he cannot but express the sincere and sanguine hope, that, with the re-establishment of peace, the system founded by our wise and virtuous ancestors will quietly revert to its original principles and beneficent operation, and continue to vindicate to future ages, and the enlightened judgment of the world, the comprehensive statesmanship and enlarged and noble patriotism in which it was conceived.

and circumscribed, since it represents a certain number of objects which are familiar to the citizens, and beloved by all. It is identified with the very soil, with the right of property, and the domestic affections; with the recollections of the past, the labors of the present, and the hopes of the future. Patriotism, then, which is frequently a mere extension of individual egotism, is still directed to the State, and is not excited by the Union. Thus the tendency of the interests, the habits, and the feelings of the people is to centre political activity in the States in preference to the Union." He then adds, as the result fairly deducible from the actual operation of the constitutional system of America for half a century, the whole of the period to which his observations and researches extended, — "that experience has hitherto shown, that, whenever a State has demanded any thing with perseverance and resolution, it has invariably succeeded;" and that, "when there has been occasion to interpret the terms of the Constitution, the interpretation has been most frequently favorable to the States, and adverse to the Union."

This enlightened and philosophical observer here speaks of the peaceful and normal operation of the constitutional system of America, while questions between the States and the general government are left to the arbitrament of those elements of legal and moral power inherent in the system, and which form its peculiar and characteristic distinction. When the system itself is attempted to

be subverted by an appeal to force on the part of some of the States, new and extraneous elements are called into action by the interest which the rest of the States may have in the maintenance of the Union; and the general government then displays an apparent and exceptional energy, not derived from its intrinsic powers, but from the combined and co-operative support of the States which adhere to it, and which bring all their own powers and resources in aid of the Federal cause. "In this case," says Monsieur de Tocqueville, "the general government would be exerting a force not derived from itself, but from a principle contrary to its nature. . . . Thus the province of Holland, in the Republic of the Low Countries, and the emperor in the Germanic Confederation, have sometimes put themselves in the place of the Union, and have employed the Federal authority to their own advantage."[1]

Have the results of experience shown any more foundation for the other leading objection of the

[1] Mais alors il ne tirera plus sa force de lui-même; il la puisera dans un principe qui est contraire à sa nature. . . . C'est ainsi que la province de la Hollande dans la république des Pays Bas, et l'empereur dans la Confédération Germanique, se sont quelquefois mis à la place de l'union, et ont exploité dans leur intérêt particulier la puissance fédérale."—De Tocqueville de la Démocratie en Amérique, vol. I. pp. 448, 449. Nothing can surpass in power of logical analysis or in profound sagacity of reflection the whole of the discussion here referred to, on the relative power of the general and State governments, in which the author illustrates as above the fundamental difference between a geographical combination of States making use of the instrumentality of the general government for objects of real or supposed interest to themselves, and the action of that government depending on its own intrinsic energies.

opponents of the Constitution, derived from its alleged aristocratical tendencies? Time and the course of events have, undoubtedly, wrought no small transformation in the character of the government from that of a temperate and well-balanced republic, which the sober wisdom of the framers of the Constitution impressed upon it, and which forms its true theory. But that transformation has not been in the direction of aristocracy. It has been, on the contrary, pre-eminently democratic, giving more and more development to the power of mere numbers, and substituting the arbitrary and uncontrolled will of the majority for the wholesome restraints of constitutional law.

To this cause has been mainly owing the progressive deterioration of the public morals, affecting at first the agents of the people, but afterwards, in their turn, the people themselves; for we must not forget the lesson which the leading champion of popular rights in America has himself taught us. Speaking of the necessity of surrounding power, in whatever hands it may be placed, the many as well as the few, with adequate guards and checks, Mr. Jefferson,[1] at the moment when the foundations of free institutions were laid in America, held this monitory and instructive language: "We should look forward to the time, and that not a distant one, when corruption, in this as in the country from which we derive our origin, will have seized the heads of the government, and be spread by them

[1] See notes on Virginia, chap. XIII.

through the body of the people; when they will purchase the voices of the people, and make them pay the price."

These deplorable changes, so far as they have been manifested, have been brought about by a departure from the maxims of the founders of the Constitution, and by overleaping or undermining the barriers established by their wisdom and foresight for the security of republican liberty.[1] As long as the government, in its practical working, was kept true to its republican theory, and to the original principles of the Constitution, it exhibited — rising, as if by enchantment, out of a state of paralysis, anarchy, and disorder — a spectacle of vigorous national growth and development, of solid and teeming prosperity, of liberty combined with order, of peace at home and strength abroad, such as the world had never seen realized before in an equal period of time.

The convention of Virginia adjourned finally on the 27th of June, 1788; and, a few days thereafter, Mr. Madison set out for New York to resume his seat in Congress, which was still in session at that place. He was preceded by the news of the ratification of the Constitution by Virginia, which had

[1] Without adverting here to specific violations of the Constitution, three general causes may be mentioned as having contributed chiefly to that transformation of the government spoken of in the text, — the substitution of universal for qualified suffrage; the loose and reckless admission of foreigners to the privileges of American citizenship; and the virtual transfer of the election of chief magistrate of the Union, from the colleges of electors provided for by the Constitution, to illegitimate and irresponsible party conventions dictating the choice in the name of the people.

diffused joy and enthusiasm along his route. In Alexandria, a most joyous celebration of the event was held the day after the adjournment of the convention. It was attended by General Washington, who, in a letter of the same date to his friend, General Charles Cotesworth Pinckney, of South Carolina, gave the following glowing account of the celebration: —

"No sooner had the citizens of Alexandria, who are Federal to a man, received the intelligence by the mail of last night, than they determined to devote this day to festivity. But their exhilaration was greatly increased, and a keener zest given to their enjoyment, by the arrival of an express, two hours before day, with the news that the convention of New Hampshire had, on the 21st instant, acceded to the new Confederacy by a majority of eleven votes, that is to say, fifty-seven to forty-six. Thus the citizens of Alexandria, when convened, constituted the first public company in America which had the pleasure of pouring a libation to the prosperity of the ten States that had actually adopted the government. The day itself is memorable for more reasons than one. It was recollected that it was the anniversary of the battles of Sullivan's Island and Monmouth. I have just returned from assisting at the entertainment, and mention these details, unimportant as they are in themselves, the rather because I think we may rationally indulge the pleasing hope that the Union will now be established upon a durable basis, and that

Providence seems still disposed to favor the members of it with unequalled opportunities for political happiness."

In Philadelphia, the central and most populous city of the Union, the public rejoicings assumed a more imposing form. The news of the ratification of New Hampshire had been received there on the 26th of June; and, although that sufficed for the legal establishment of the Constitution, the work was considered morally incomplete without the concurrence of Virginia, the oldest of the States, who had led the way in all the great stages of national deliverance and regeneration. The news of her accession arrived on the 2d day of July; and measures were then immediately taken for celebrating the establishment of the Constitution, by demonstrations of the public joy on a scale of unusual magnificence and grandeur. The approaching anniversary of American Independence was selected as the most appropriate day for the new commemoration; and all the resources of art, ingenuity, poetry, allegory, and eloquence, were exhausted on a pageant in which twenty thousand people were the actors, in which the various callings, pursuits, and interests of every part of America, in all her diversity of climates and branches of industry, were brought together by lively representations, symbolical or personal; and a new era of prosperity, fraternity, and peace proclaimed to all.[1]

[1] See an interesting account of this grand celebration in Carey's Museum, vol. IV. pp. 57–78

The accession of Virginia gave rise, doubtless, to similar feelings with a large portion of the population of the city of New York; but all public manifestation of those feelings was suspended by the painful uncertainty which still hung over the deliberations of the convention of that State, then in session at Poughkeepsie, a town on the Hudson, seventy-five miles above the city of New York. Intelligence of the final action of Virginia was received in Poughkeepsie on the 3d day of July; and a salute, we are told, was fired in honor of it.[1] If the fact were so, it must have been owing to a spontaneous movement of private individuals, or the suggestion of a minority of the convention; for the sympathies of the majority of the body were well known to be on the opposite side.

That body had now been in session since the 17th day of June, without having made any sensible progress towards the solution of the great question with which they were charged. When it assembled, two-thirds of its members, under the lead of the strong-willed and inflexible Clinton, governor of the State and president of the convention, zealously seconded by Messrs. Yates, Lansing, and Melancthon Smith, were thoroughly opposed to the Constitution. Although the abilities, eloquence, and energy of Hamilton, Chancellor Livingston, Jay, and Duane, were strenuously exerted in its support, argument, and reason were powerless against the deep-rooted prejudices or

[1] History of American Republic, vol. III. p. 514.

narrow views that had so long controlled the policy of the State, and arrayed it, as we have heretofore seen, in solitary opposition to that indispensable Federal measure, — the grant of the impost duty to Congress, — even after Rhode Island had yielded her objections to it.

The only hope of overcoming such an opposition was in the accession of a sufficient number of the other States to establish the Constitution, and then presenting to New York the alternative of adoption, or being left out of the Union and incurring all the hazards and inconveniences of so anomalous a position. The accession of New Hampshire, completing the requisite number of nine States, was known in Poughkeepsie on the 24th of June; but made hardly any impression on the firmness of the opposition in the convention, so long as there was a prospect of the rejection of the Constitution by Virginia, strong hopes of which were held out by the leaders of the party in that State.[1] The decision of Virginia was looked to with the utmost anxiety by both sides of the convention at Poughkeepsie. On the 27th of June, three days after the arrival of the intelligence of the ratification of

[1] See letters of Mr. Henry, Richard Henry Lee, and Colonel Grayson, in "The Life of Lamb" — a New-York publication, abounding in curious revelations of the political affiliations of the time.

Chancellor Livingston, in the convention at Poughkeepsie on the 25th of June, while enforcing the new aspect of the question produced by the accession of New Hampshire as the ninth State, adverted significantly to the hopes with which the opposition flattered themselves of "a league with some of the Southern States," referring, of course, to Virginia and North Carolina.

New Hampshire, Colonel Hamilton wrote to Mr. Madison: —

"We eagerly wait for further intelligence from you, as our chance of success depends upon you. There are some slight symptoms of relaxation in some of the leaders, which authorizes a gleam of hope, if you do well; but certainly, I think, not otherwise."

When the hopes of the opposition with regard to Virginia were finally dashed by news of her acceptance of the Constitution, the ingenious and subtle minds of the convention were turned to devising some cabalistic formula by which New York could be admitted into the Union under an apparent ratification of the Constitution, without a full and unqualified acceptance of its provisions. Upon expedients of this sort all the refinements of diplomacy and the skill of special pleading were employed for three weeks. A proposition for an unqualified ratification of the Constitution after the manner of Virginia, accompanied with a recommendation of amendments to be subsequently acted upon in the mode prescribed by the Constitution itself, was promptly rejected. The alternatives brought forward by the opposition were a *conditional* ratification depending upon the adoption of a long list of amendments, some of them of a very radical character, and the reservation of *a right to withdraw from the Union*, if those amendments should not be adopted within a limited period.

The extreme solicitude of some of the advocates of the Constitution, especially of the members from the city of New York, to bring the State into the Union at once, regardless of considerations affecting the dignity of the other States or of the Constitution itself, led them to listen with too much facility to propositions of this character. Mr. Madison, being consulted by Colonel Hamilton on one of these suggestions with an apparent leaning in its favor on his part, put a decided negative upon it in the following terms: —

"I am sorry that your situation obliges you to listen to propositions of the nature you describe. My opinion is, that a reservation of a right to withdraw, if amendments be not decided upon, under the forms of the Constitution, within a certain time, is a *conditional* ratification; that it does not make New York a member of the new Union; and, consequently, that she could not be received on that plan. Compacts must be reciprocal: this principle would not, in such a case, be preserved. . . . The idea of reserving a right to withdraw was started at Richmond, and considered as a *conditional* ratification, which was itself abandoned as worse than a rejection."[1]

The proposition was at last brought forward, and was then opposed by Colonel Hamilton on the ground suggested by Mr. Madison. This being rejected by a vote of the convention, the expe-

[1] See letter of Mr. Madison to Colonel Hamilton, in Hamilton's Works, vol. i. p. 465.

dient which the opposition finally rallied upon was to offer a form of ratification, with a long declaration of fundamental principles prefixed, and an equally long catalogue of amendments subjoined, "*upon condition, nevertheless*," that, until a second general convention be assembled to consider the proposed amendments, certain powers granted by the Constitution to Congress should not be exercised but under specified limitations and restrictions prescribed in the act of ratification.

To this form of ratification — modified only by substituting for the words, "upon condition, nevertheless," the phrase "*in full confidence, nevertheless*" — the advocates of the Constitution, in their eagerness for a nominal success, assented. And even this Pyrrhus victory was purchased at the price of their previous concurrence in a resolution, made thereby unanimous, for the call of a second general convention with plenary power to propose amendments to the Constitution. A circular was accordingly prepared, and signed by Governor Clinton as president, — "by the unanimous order," it was added, "of the Convention," — earnestly urging upon the other States the adoption of immediate measures for the call of a second convention.[1]

[1] Of the spirit which animated the leading champions of the Constitution in the convention at Poughkeepsie — the delegation of the city of New York especially — to obtain the semblance of a ratification *à tout prix* the following anecdote related by the biographer of Colonel Hamilton, apparently with great complacency, affords a striking illustration. A friend about to return to the city of New York, desiring to know what he should say as to the prospect of the adoption of the

The concurrence of the friends of the Constitution at Poughkeepsie in these inauspicious proceedings of the convention gave rise to very unpleasant impressions among the supporters of the Constitution in other States. Mr. Madison, writing to General Washington from New York, on the 15th of August, 1788, says: —

"You will have seen the circular letter from the convention of this State. It has a most pestilent tendency. If an early general convention cannot be parried, it is seriously to be feared, that the system, which has resisted so many direct attacks, may be at last undermined by its enemies."

In another letter to General Washington, written on the 24th of the same month from the city of New York, he recurred to the subject in the following terms: "The circular letter from this State is certainly a matter of as much regret as the *unanimity* with which it passed is matter of surprise. . . . I begin now to accede to the opinion which has been avowed for some time by many, that the circumstances involved in the ratification of New York will prove more injurious than a rejection would have done. The latter would have rather alarmed the well-meaning anti-Federalists elsewhere; would have had no ill effect

Constitution, Colonel Hamilton replied, "God only knows: several votes have been taken, by which it appears that there are two to one against it." But then, after a brief pause, he added in a most emphatic manner, "*Tell them the convention shall never rise, until the Constitution is adopted.*" — See Hist. of American Republic, vol. III. pp. 522, 523.

on the other party; would have excited the indignation of the neighboring States; and would have been necessarily followed by a speedy reconsideration of the subject. I am not able to account for the concurrence of the Federal part of the convention in the circular address on any other principle than the determination to purchase an immediate ratification in any form and at any price, rather than disappoint this city of a chance for the new Congress. This solution is sufficiently justified by the eagerness displayed on this point, and the evident disposition to risk and sacrifice every thing to it."

How earnestly General Washington concurred with Mr. Madison in deprecating the course pursued by the convention at Poughkeepsie is not left to conjecture. His masterly common sense at once seized all its bearings, and characterized them in the following pointed and vigorous phraseology. "I confess," said he in a letter of the 28th August to General Lincoln, "my apprehension is, that the New-York circular is intended to bring on a general convention at too early a period, and, in short, by referring the subject to the legislatures, *to set every thing afloat again.* I wish I may be mistaken in imagining, that there are persons, who, upon finding they could not carry their point by an open attack upon the Constitution, have some sinister designs to be silently effected, if possible."

In another letter, written on the 22d of Septem-

ber, to Colonel Henry Lee, then one of the delegates in Congress from Virginia, he says: "The adoption of the Constitution so extensively, and with so liberal an acquiescence on the part of the minorities in general, promised [stability to the Republic], until lately the circular letter of New York carried, in my apprehension, an unfavorable, if not insidious, tendency to a contrary policy. . . . For it is to be apprehended, that by an attempt to obtain amendments, before the experiment has been candidly made, 'more is meant than meets the ear;' that an intention is concealed to accomplish slyly what could not be done openly, — *to undo all that has been done.*"

It was a very short time before the apprehensions of Mr. Madison and General Washington were fully realized. The circular letter of New York was the signal for renewed agitation to the adversaries of the Constitution; and the great battle that had already exhausted so much of the public energies, and excited so many patriotic anxieties, was in several of the States to be fought over again. In Pennsylvania, a meeting of delegates, who had opposed the adoption of the Constitution, was convened at Harrisburg, on the 2d day of September, 1788. While professing "*acquiescence*" in the system which had been established by the voice of a majority of the people, — "in full confidence, however" (repeating the language of the New York Convention), "that the same will be revised *without delay*," —

they passed resolutions for the call of a second general convention, and drew up an application to the legislature of the State, invoking their immediate co-operation in the necessary measures for that object.[1]

North Carolina, whose convention adjourned on the 2d day of August, without adopting the Constitution, but instead thereof referred a long series of amendments to "*the convention of the States that shall or may be called for the purpose of amending the Constitution*," continued to pursue this phantom, deluded by the proceedings of New York, for nearly a year and a half before she united her destinies with those of the eleven States that had accepted the Constitution. Rhode Island, that had refused even to call a convention of her own people to consider the Constitution, now adopted the extraordinary course, encouraged by the New-York circular, of demanding another general convention to revise the system, before she had condescended to deliberate upon it at all, in the manner required both by the Constitution and by solemn resolves of Congress.[2]

The legislature of Virginia, we shall presently see, at their first meeting after the adoption of the Constitution by the State, was stimulated by the circular of New York to renewed hostilities under the lead of Mr. Henry; and, in the preg-

[1] See the proceedings of this meeting in Carey's Museum, vol. IV. pp. 268–270.

[2] See Letter of Mr. Olney to Colonel Hamilton, in Hamilton's Works, vol. I. pp. 484, 485.

nant language of Washington, seemed ready "to undo all that had been done." New York herself did not escape the effects of her own disorganizing policy. Owing to an obstinate contention between the two branches of her legislature respecting the mode of choosing, she made no appointment of presidential electors, and consequently gave no voice in the first election of chief magistrate of the Union; while an eager and irreconcilable competition of rival parties left her without senatorial representatives in the new Congress, though sitting in her own metropolis, during the greater part of its first and very protracted session under the Constitution.

The general course of our narrative now recalls us to the proceedings of the existing Congress for putting into operation the new government, just established by the required concurrence of the States. The Federal Convention, on the completion of their great work, resolved, "That, as soon as nine States shall have ratified the Constitution, Congress should fix a day on which electors should be appointed by the States that shall have ratified the same, and a day on which the electors should assemble to vote for the president, and the time and place for commencing proceedings under the Constitution." The ratification of New Hampshire, the ninth State, — soon to be followed by that of Virginia, — being laid before Congress on the first day of July, it was ordered that a committee be appointed to

report an act for putting the Constitution into operation, in pursuance of the resolutions of the late Federal Convention.

The report of this committee was taken up for consideration on the 14th day of July; and by the 21st of that month, as we learn from a letter of Mr. Madison to General Washington, all the requisite arrangements were agreed upon, except the designation of a place for commencing proceedings under the Constitution. The electors were to be chosen on the first Wednesday of January; to assemble in their respective States and vote for president on the first Wednesday of February; and the proceedings under the Constitution to commence on the first Wednesday of March.

But a wide difference of interests and opinions had been disclosed in regard to the place where the government was to be organized and put into operation. Philadelphia was first proposed, and failed by a single vote. New York was then proposed, and set aside for Baltimore, which was carried by a majority of one vote only. The decision in favor of Baltimore was a few days afterwards — on the sixth of August — rescinded; and New York substituted with the concurrence of seven States only, that being the smallest number sufficient to constitute an affirmative vote of Congress under the confederation. On the question to agree to the measure thus amended, which came up for decision on the 13th of August, —

Rhode Island, one of the States that voted in favor of New York, having in the mean time withdrawn from Congress, — no affirmative vote could be obtained, and the whole matter was again at sea.

The delegation of New York, headed by Colonel Hamilton, having already secured the co-operation of the three remaining New-England States, and also of New Jersey, — to which last State was held out the reversion of the seat of government at Trenton,[1] after a sojourn at New York, long enough to give a direction to the initiatory movements of the machine, — trusted to unremitting perseverance and wearying delays to overcome all resistance. On the 24th of August, Mr. Madison wrote to General Washington: —

"By the last vote taken, the whole arrangement was thrown out; and the departure of Rhode-Island, and the refusal of North Carolina to participate in the business, left eleven States only to take it up anew. In this number, there are not seven States for any place; and the disposition to relax, as usually happens, decreases with the progress of the contest. What and when the issue will be, is really more than I can foresee. It is truly mortifying that the outset of the new

[1] See letter of Colonel Hamilton to Governor Livingston of New Jersey, dated 29th August, 1788, in Hamilton's Works, vol. i. pp. 471, 472; also Sedgwick's Life of Livingston, p. 429, where this letter is characterized "as strikingly illustrative of the adroitness" of the writer.

government should be immediately preceded by such a display of local feeling."

At length, this painful spectacle was terminated by a reluctant acquiescence, under a species of duress, in the selection of the city of New York as the place for commencing the operations of the new government. Mr. Madison thus speaks of the result in a letter to General Washington, written from New York on the 14th of September, the day after the final determination of the question: "It was the result of the dilemma to which the opponents of New York were reduced,—of yielding to its advocates or strangling the government in its birth. . . . It has, indeed, been too apparent that local considerations have very improperly predominated in this question; and that something more is aimed at than merely the first session of the government at this place. Every circumstance has shown that the policy is to keep Congress here till a permanent seat be chosen, and to obtain a permanent seat, at farthest, not beyond the Susquehanna. . . . I have been made so fully sensible of these views in the course of the business, as well as of the impropriety of so eccentric a position, that I could finally have concurred in any place more southward, to which the Eastern States would have acceded; and, previous to the definitive vote, a motion was made tendering a blank for that purpose."

The motion here referred to, drawn by Mr. Madison, but offered by his colleague Colonel

Carrington, was in these words: "Whereas it is of great importance that a government, founded on the principles of conciliation and impartial regard to the interests and accommodation of the several parts of the Union, should commence in a spirit corresponding with those principles, and under every circumstance calculated to prevent jealousies in one part of the Union of undue bias in the public councils or measures towards another part; and it is conceived that these desirable purposes will be much favored by the appointment of some place for the meeting of the new government more central than the present seat of Congress, and which will at the same time be more likely to obviate disagreeable and injurious discussions concerning the place most fit for the seat of the Federal business until a *permanent* seat be established, as provided for by the new Constitution, — Resolved, that —— be the place for commencing proceedings under the new Constitution."

The game, however, had been played out; and but three States voted for this motion, which served only to place upon the records of Congress, in its calm appeal to the principles of a just, impartial, and enlightened policy, a protest against the eager and persevering pursuit of local advantages as condemned by the genius of the Constitution itself.

The preparatory arrangements, depending upon Congress, for putting the new government into

operation being thus completed, Mr. Madison had a short breathing time from the labors and excitements of the past crowded and busy twelvemonth, to review, at leisure, the varying phases of the great struggle in which he had been engaged. In a letter to Mr. Jefferson, of the 17th of October, 1788, he mentions the remarkable but instructive fact, that "many of the *true* grounds of opposition to the Constitution" — those which most powerfully, but not avowedly, influenced the votes of the mass of its opponents — were but little alluded to in the debates, and found no place among the amendments proposed by the different State conventions. "The articles," he says, "relating to treaties [involving the payment of debts due to British creditors], to paper money, and to contracts,[1] created more enemies than all the errors in the system, positive and negative, put together. It is true, nevertheless, that not a few, particularly in Virginia, have contended for the proposed alterations from the most honorable and patriotic motives."

[1] In the convention of Virginia, although Mr. Henry did not venture openly to oppose the clauses of the Constitution which restrain the States from emitting paper money or from passing laws impairing the obligation of contracts, yet he plainly showed, in incidental allusions, how distasteful those clauses were to him. While professing great dislike to paper money, *except* in case of "extreme necessity," he said, "it was a thing which that mighty Federal Convention had no business with;" and, among the odious features of the Constitution enumerated by him to prove that it created a consolidated government, he said, "You are not to touch private contracts!" (See his speech of 9th June.) His opposition to the constitutional provision on the subject of treaties was open and avowed, though without any express reference to its operation on the case of the British debts

The letter of Mr. Madison to Mr. Jefferson, here referred to, is replete with so profound a political philosophy, and throws so interesting a light on certain shades of difference in the political creeds of these two distinguished men, united by a common attachment to the cause of popular government, as well as ties of the closest personal friendship, that a few additional extracts from it seem due to the subject and the occasion. Mr. Jefferson, we have seen, had expressed a very earnest desire for the annexation of a Bill of Rights to the Constitution. Mr. Madison, while favoring every proper "guard to public liberty and individual rights," thought that, in a Federal system like that of the United States, where all powers not granted still abide with the people of the States, the same necessity for Bills of Rights did not exist as in a monarchical government, and that an undue importance was therefore attached to the incorporation of one with the new Constitution. "In a monarchy," he said, "the latent force of the nation is superior to that of the sovereign, and a solemn charter of popular rights must have a great effect as a standard for trying the validity of public acts, and a signal for rousing and uniting the superior force of the nation; whereas, in a popular government, the political and physical power may be considered as vested in the same hands, — that is, in a majority of the people; and consequently the tyrannical will of the sovereign is not to be controlled by the

dread of an appeal to any other force in the community."

A view of the subject, alike practical and philosophical, he developed in the following striking remarks: —

"Experience proves the inefficacy of a Bill of Rights, when its control is most needed. Repeated violations of these parchment barriers have been committed by overbearing majorities in every State. In Virginia, I have seen the Bill of Rights violated in every instance, where it has been opposed to a popular current. Notwithstanding the explicit provision contained in that instrument for the rights of conscience, it is well known that a religious establishment would have taken place in that State, if the legislative majority had found, as they expected, a majority of the people in favor of it.

"Wherever the real power in a government lies, there is the danger of oppression. In our governments, the real power lies in the majority of the community; and the invasion of private rights is *chiefly* to be apprehended, not from acts of government contrary to the sense of its constituents, but from acts in which the government is the mere instrument of the major number of its constituents. This is a truth of great importance, but not yet sufficiently attended to; and is probably more strongly impressed on my mind by facts, and reflections suggested by them, than on yours, which has contemplated abuses of power issuing from a very different quarter."

Mr. Madison here points to what was undoubtedly a principal source of the variant views entertained by Mr. Jefferson and himself, with regard to some of the fundamental securities respectively deemed by each best adapted to the preservation of liberty in a well-constituted popular government. While the one was naturally occupied abroad, on the theatre of the Old World, in contemplating the spectacle of abuses proceeding from the inordinate power of one or the few, the other was grappling at home with the agitations and disorders of a new and unregulated democracy, and seeking, by a wise system of republican checks, to establish necessary safeguards for the rights of all against the encroachments of an absolute and unrestricted majority.

One more passage of this pregnant letter, for its rare sagacity and depth of reflection, merits insertion here.

"It has been remarked," says Mr. Madison, "that there is a tendency in all governments to an augmentation of power at the expense of liberty. But the remark, as usually understood, does not seem to me well founded. Power, when it has attained a certain degree of energy and independence, goes on generally to farther degrees. But, when below that degree, the direct tendency is to farther degrees of relaxation, until the abuses of liberty beget a sudden transition to an undue degree of power. With this explanation, the remark may be true; and in the latter sense only is it, in my opinion,

applicable to the existing governments in America. It is a melancholy reflection that liberty should be equally exposed to danger, whether the government have too much or too little power, and that the line which divides these extremes should be so inaccurately defined by experience."

The subject of supplemental amendments to the Constitution, and the most expedient mode of initiating them, now began to excite a lively interest throughout America. The Constitution itself had provided two modes of introducing amendments, — first, specific propositions of amendment submitted directly by Congress, with the concurrence of two-thirds of both Houses, to the action of the States; or, secondly, the call by Congress, on the previous application of two-thirds of the legislatures of the States, of a general convention, whose office it should be to propose whatever amendments it thought proper. In either case, the amendments proposed were to become valid as part of the Constitution, upon the ratification of three-fourths of the States. The general sentiment of America was in favor of providing, by amendment of the Constitution, certain additional safeguards, which, whether necessary or not, promised the happy effect of appeasing the jealousies of liberty, without impairing the salutary efficiency of government. All the State conventions which recommended amendments, previous to that of New York, favored the origination of them in the mode first described, — by the direct action of Congress.

In the convention of Virginia, Mr. Madison had frankly declared himself in favor of the policy of conciliatory amendments. "It has never," he said, "been denied by the friends of the paper on the table, that it has defects." And again, in the debate of the same day,[1] he declared, "that such amendments as seemed, in his judgment, to be without danger, he would readily admit; and that he would be the last to oppose any amendment that would give satisfaction to gentlemen, unless it were dangerous." As the period approached for the meeting of the legislature of Virginia, before which body the circular of the New-York Convention would doubtless come up for early consideration, the question of amendments, as well as the most appropriate mode of originating them, acquired more and more of practical importance; and, on both points, Mr. Madison explained himself without reserve, in answer to a letter addressed to him by a friend who was a member of the Assembly.

"You wish to know," he said, "my sentiments on the project of another general convention, as suggested by New York. I shall give them to you with great frankness, though I am aware they may not coincide with those in fashion at Richmond, or even with your own. I am not of the number, if there be any such, who think the Constitution lately adopted a faultless work. On the contrary, there are amendments which I wished it to have received before it issued from the place in which

[1] June the 24th.

it was formed. These amendments, I still think, ought to be made, according to the apparent sense of America; and some of them at least, I presume, will be made. There are others concerning which doubts are entertained by many, and which have both advocates and opponents on each side of the main question. These, I think, ought to receive the light of actual experiment, before it would be prudent to admit them into the Constitution. With respect to the first class, the only question is which of the two modes provided be most eligible for the discussion and adoption of them."

He then proceeded to expose in detail the objections against a general convention, which, in his estimation, gave a decided preference to the mode by direct action of Congress. Of these, it seems quite sufficient to cite the leading one: —

"If a general convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support, as well as to amend, the system. It would, consequently, give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already too much heated men of all parties; and would, no doubt, contain individuals of insidious views, who, under the mask of making alterations, — popular in some parts of the

Union, but inadmissible in others, — might have a dangerous opportunity of sapping the very foundation of the fabric."[1]

The legislature of Virginia assembled at Richmond on the 20th of October, 1788. The circular of the New-York Convention was laid before it at the opening of the session, and referred to a committee of the whole House. Mr. Henry, who was a member for the county of Prince Edward, held an absolute ascendant in the body, and seemed now determined to avenge his defeat before the convention by as decisive a course of action against the Constitution as it was competent for the legislature to adopt. Mr. Madison was with the Congress at New York, and no longer in a position to confront him with the serene and irresistible power of his wisdom and persuasive reason. George Nicholas and John Marshall, who had been members of the preceding legislature as well as of the late State Convention, were now withdrawn from the arena by the urgency of their professional engagements; and of all those who had taken part, on the side of the Constitution, in the debates of the convention, there was not one present but Mr. Corbin.

This assembly, having been chosen previous to the meeting of the convention, though after its election, and without any reference to the question of

[1] Manuscript letter of J. Madison to George Lee Turberville, Esq., member of the House of Delegates of Virginia, dated 2d November, 1788.

the Constitution already referred to the sole determination of another body specially deputed for the purpose, happened to embrace many members whose ancient prepossessions arrayed them against the ultimate decision of the convention, when pronounced in favor of the acceptance of the Constitution. It presented, therefore, materials the most favorable for Mr. Henry to operate upon, while his efforts were zealously seconded by some of the ablest and most active of his coadjutors in the late convention, who were now, like himself, members of the legislature, — Colonel Grayson, Mr. Monroe, Governor Harrison, and others.

On the 30th day of October, the subject of the New-York Circular was taken up in committee of the whole; and resolutions, drawn by Mr. Henry, were agreed to. These resolutions declared that "many of the great, essential, and unalienable rights of freemen, if not cancelled, were rendered insecure under the Constitution;" and that "for quieting the minds of the good citizens of this Commonwealth, and securing their dearest rights and liberties, and preventing those disorders which must arise under a government not founded in the confidence of the people, application should be made to Congress, as soon as they shall assemble under the new Constitution, to call a second convention for proposing amendments to it." For these resolutions, when reported to the House, a substitute was offered, recommending that Congress, in lieu of calling another convention, should

itself propose to the States articles of amendment corresponding to those which had been presented by the convention of Virginia. The substitute was rejected by a vote of eighty-five to thirty-nine; and a committee was then appointed, of which Mr. Henry was the acting chairman, to draw up an application of the legislature of Virginia to Congress for the call of a second general convention; an address to the other States inviting their concurrence in this application; and an answer to the circular-letter of Governor Clinton as President of the New-York Convention.

In the draughts of these papers, Mr. Henry substantially repeated, and somewhat intensified, the language of dissatisfaction and hostility used in the resolutions which had been adopted. In the conclusion of the application to Congress, it was declared in a tone of undisguised emphasis, that "the anxiety with which our countrymen press for the accomplishment of this end will ill admit of delay." The draughts were taken up for consideration in the House on the 14th day of November, when they were carried, against substitutes proposed for them, by a vote of seventy-two to fifty, — exhibiting a large reduction from the imposing majority by which the original resolutions had been carried, and evincing a decided re-action in the dominant party itself. Colonel Edward Carrington, who, on the recent expiration of his service in the Congress of the confederation, had become a member of the legislature for the county of Pow-

hatan, wrote to Mr. Madison the day after this vote: "Mr. Henry's draughts were agreed to; but we have lessened the majority considerably by proposing others conforming to the resolutions of the Commonwealth in June, and insisting that the *people* in that convention had pointed out the mode in which amendments should be sought; and that the Assembly ought not to divert the course of their pursuit."[1]

As soon as Mr. Henry had carried his resolutions for the call of another convention, he turned his attention to the choice of persons for senators of Virginia in the new government, who should be animated with his own spirit of opposition to the Constitution. On the 1st day of November, he moved that the two Houses should, on that day week, proceed by joint ballot to the choice of two senators to represent the commonwealth in the Congress of the United States. The friends of the Constitution, though seeing but little prospect, in the existing temper of the legislature, of carrying any nomination of their own, were nevertheless intent on offering a candidate in whom their principles, their patriotism, and elevation of character, should be fitly represented. Their eyes were turned, with one consent, to Mr. Madison. His

[1] In a letter to Mr. Madison, written three days later (the 18th of November), Colonel Carrington, speaking of the decided re-action in the legislature, says: —

"I verily believe that had such a union [a proper *concert* among the friends of the Constitution in the legislature] taken place at an early period, Mr. Henry might, upon such propositions as these, have been left in a minority by the day his draughts of letters passed."

own preference was decidedly for the House of Representatives as a theatre of more active usefulness, and at the same time better agreeing with his unambitious tastes. This preference was freely expressed to all those friends with whom he corresponded, and also committed to the friendly confidence of Colonel Carrington, who, on his return to Virginia for the purpose of taking his seat in the legislature, was requested to make it known to others. Colonel Carrington, calling at Mount Vernon on his way to Richmond, became acquainted with the earnest wishes of General Washington on the subject, which he thus communicated to Mr. Madison in a letter of the 19th of October, 1788: —

"I had much conversation with the General upon the probable politics of the Assembly with respect to the Constitution. He is fully persuaded that anti-Federalism will be the actuating principle, and that great circumspection is necessary to prevent very mischievous effects from a co-operation in the insidious proposition of New York. He is particularly alarmed from a prospect of an election to the Senate entirely anti-Federal. . . . He is decided in his wishes that you may be brought forward on this occasion. I told him of your views. Upon this he observed, that, in addition to the consideration first suggested [the weight of character of the candidate], your services in the Senate will be of more importance than in the other House, as there will be much depending on that branch unconnected with the other. Other obser-

vations were made to this purpose; and the issue was his decided opinion that you ought to be proposed for the Senate."

Mr. Madison being apprised, through this and other channels, of the strong and general wish of his friends that his name should be brought forward in the pending election for the Senate, did not hesitate to sacrifice his inclinations to theirs; and, although he clearly foresaw his defeat at the hands of an uncongenial legislature, he permitted no misplaced susceptibility of wounded pride at the prospect of defeat to interfere with a high duty to worthy and illustrious associates in a great public cause. Never were manly sentiments, conscious dignity, and superiority to every motive of vulgar ambition, more nobly expressed, than in a letter he wrote to Governor Randolph on this occasion.

"My first wish," he said, "is to see the government put into quiet and successful operation, and to afford any service that may be acceptable from me for that purpose. My second wish, if that were to be consulted, would prefer, for reasons formerly hinted, an opportunity of contributing that service in the House of Representatives, rather than in the Senate, provided the opportunity be attainable from the spontaneous suffrage of the constituents. Should the real friends of the Constitution think this preference inconsistent with any primary object, as Colonel Carrington tells me is the case with some entitled to peculiar respect,

and view my renouncing it as of any material consequence, I shall not hesitate to comply.

"You will not infer, from the freedom with which these observations are made, that I am, in the least, unaware of the probability, that, whatever my inclinations or those of my friends may be, they are likely to be of little avail in the present case. I take it for certain that a clear majority of the assembly are enemies to the government; and I have no reason to suppose that I can be less obnoxious than others on the opposite side. . . . With these circumstances in view, it is impossible I can be the dupe of false calculations, even if I were, in other cases, disposed to indulge them.

"I trust it is equally impossible for the result, whatever it may be, to rob me of any reflections which enter into the internal fund of comfort and happiness. Popular favor or disfavor is no criterion of the character maintained with those whose esteem an honorable ambition must court; much less can it be a criterion of that maintained with one's self. And, when the spirit of party directs the public voice, it must be a little mind, indeed, that can suffer in its own estimation, or apprehend danger of suffering in that of others."

On the day fixed for the purpose, — the 8th of November, — the election took place. Mr. Henry, as his biographer informs us, "took the unusual liberty of nominating two candidates," — Mr. Richard Henry Lee and Mr. Grayson, — both of them

of the party opposed to the Constitution. On the side of the Constitution, Mr. Madison was the sole candidate presented. Mr. Henry, as we learn from contemporary testimony, not only took the unusual liberty of nominating both of the candidates of his party, but animadverted with great freedom and unreserve on the political principles and conduct of Mr. Madison, then absent in the discharge of his public duties as one of the delegates of the State in the Congress at New York. He particularly alleged, notwithstanding the declarations to the contrary which had been made by Mr. Madison in the convention of Virginia, that he was wholly opposed to amendments of the Constitution.[1] The skilful orator well calculated the effect of this assertion on an assembly already committed by its acts to the pursuit of amendments at every cost.

The entire number of ballots given in the election was one hundred and sixty-two; making the majority necessary to a choice, eighty-two. Mr. Lee, who was the leading candidate, received ninety-eight votes; Mr. Grayson, eighty-six; and Mr. Madison, seventy-seven.[2] It thus appeared, that, in spite of rooted political prejudices and notwithstanding the vehement philippic pronounced against him by Mr. Henry, Mr. Madison wanted

[1] Colonel Carrington, writing to Mr. Madison, from Richmond under date of the 15th November, 1788, uses these words: "Mr. Henry asserted in the House that you were against, or unfriendly to, amendments."

[2] See manuscript letter of Colonel Carrington to Mr. Madison, dated 9th November, 1788.

five votes only of an election by a body, of which two-thirds of the members were decidedly hostile to the Constitution whose adoption he had so ably and successfully sustained. Such was the involuntary homage paid to the elevated purity of his character, his unquestioned patriotism, and his matchless ability.

The result of this election remitted Mr. Madison to the original object of his preference, — a seat in the House of Representatives. But here, again, unceasing efforts were made by the anti-Federal leaders in the legislature to bar against him every avenue to success. In laying off the State into districts for the election of representatives, ingenious and artificial combinations were resorted to for the purpose of insuring his defeat. The county in which he resided was thrown into association with seven others, five of which, through their delegates in the convention, had given an undivided vote against the acceptance of the Constitution; another had divided its vote; and one only, besides the county in which he lived, had given an undivided vote for the ratification. At the same time, a restriction, unknown to the Constitution and supposed to be specially aimed at him, was enacted, which required that the representative should be a resident of the district for which he was chosen. The candidate to oppose him seems also to have been selected under the counsel and direction of a controlling junto in the legislature.

Of these proceedings, Mr. Madison was kept advised by his faithful correspondent and high-minded friend, Colonel Carrington, who wrote to him on the 15th of November, 1788: —

"The bill for district elections of representatives passed our House yesterday. The *antis* have levelled every effort at you. The point of residence in the district is carried by some of the *feds* having, at an early period, committed themselves on that side. Your district is composed of the counties of Amherst, Albemarle, Louisa, Orange, Culpeper, Spotsylvania, Goochland, and Fluvanna. We wished to get Fauquier; but the power of the *antis* was too strong for us.[1] . . . It is as yet doubted whether Mr. Strother or Mr. William Cabell, the elder, will be your opponent. The latter, however, will not be, unless upon the principle of having the strongest interest of the two, and having reason to doubt whether the other will be able to exclude you. No effort will be left untried for effecting their purpose."

On the 18th of November, Colonel Carrington, continuing his narrative of proceedings at Richmond, wrote: "It is as yet not ascertained who will be started against you. Within a few days,

[1] Fauquier, both from geographical position and habitual intercourse, fell much more naturally into association in the same district with Orange, the county of Mr. Madison's residence, than either of the remote counties of Amherst and Goochland. But the two last were strong anti-Federal counties, while the former had voted in the convention for the adoption of the Constitution.

there has arisen some reason to suspect that Colonel Monroe will be the man." And again, on the 26th of the month, he added: "Since my last, it is decided that Monroe is to be your opponent. The interest of both Cabell and Strother will be combined in his favor. I wish you could be in the district, as no pains will be spared to impress the minds of the people with prejudices against you."[1]

These extraordinary combinations to defeat the election of Mr. Madison for the district into which he was thrown, excited a generous interest on his behalf in every part of the State; and propositions were made to him from other districts, — particularly that of Williamsburg and of Augusta, — notwithstanding the legislative restriction of residence,

[1] Of the series of hostile efforts and devices pursued by the anti-Federal party to exclude Mr. Madison altogether from political life at this time, in which Mr. Henry was represented to be the principal actor and prompter, Mr. Madison himself speaks thus calmly in a confidential letter addressed by him to Mr. Jefferson on the 8th of December, 1788, just before he set out from New York for Virginia:—

"I shall leave this place in a day or two for Virginia, where my friends, who wish me to co-operate in putting our political machine in activity as a member of the House of Representatives, press me to attend. They made me a candidate for the Senate, for which I had not allotted my pretensions. The attempt was defeated by Mr. Henry, who is omnipotent in the present legislature, and who added to the expedients common on such occasions a public philippic against my Federal principles. He has taken equal pains, in forming the counties into districts for the election of representatives, to associate with Orange such as are most devoted to his politics, and most likely to be swayed by the prejudices excited against me." — The device of *Gerrymandering* would thus seem not to have had the origin its name imports, and which common fame assigns it, but to have been first put in practice, though ineffectually, by the great Virginia orator and tribune, against Mr. Madison in the first election of representatives under the Constitution.

believed to be unconstitutional and invalid, to adopt him as their candidate, and to elect him by acclamation. He resolved, however, to confront all the adverse chances which his political opponents had so industriously arrayed against him. The business of the Congress of the confederation being virtually at an end, by the near approach of the period for the installation of the new government, he quitted New York, and, about the close of December, arrived in Virginia. The election of representatives was appointed to take place on the 2d day of February; so that but a single month, and that the most inclement of the year, was left for immediate communication with the people of his district.

That month was diligently and resolutely employed by him in meeting, by correspondence or public oral addresses, the allegations and devices of his adversaries. He had several discussions before the people with his competitor, which, while conducted with the perfect courtesy and candor belonging to their personal relations, were sustained, on both sides, with all the energy and zeal due to the importance of the public principles — the merits or demerits of the Constitution — they respectively represented.[1] The contest terminated, to the dis-

[1] Mr. Madison often gave a graphic and amusing account of a discussion which took place between him and Mr. Monroe, in the open air, on a cold January day, amid the bleak hills of Culpeper. They addressed the people, in the face of a keen, north-easterly wind, from the portico of a Lutheran meeting-house, after the close of the religious services of the day; with which the grave and solemn import of the question discussed to the future destinies of the country was supposed to be not out of keeping. Such was the extremity of the cold,

appointment of the confident anticipations of his enemies, and the great gratification of his friends and the friends of the Constitution throughout the country, in his election for the district by a handsome and decided majority.

Of the ten representatives to which Virginia was entitled, seven were returned of principles corresponding with those of Mr. Madison. Washington, so pre-eminently identified with the same cause, received the cordial and unanimous vote of the whole State for the chief-magistracy of the Union. In the election of vice-president, a strenuous effort was made by Mr. Henry and his friends to obtain the voice of Virginia for Governor Clinton, as the favorite impersonation of the principle of opposition to the new Constitution. Of the ten electoral votes given by the State, he received only three. Thus did the people of Virginia, in all these multiplied forms, on a second and solemn appeal made to them, declare their unequivocal approbation of the Constitution and of the action of the convention, which ratified it in the name and on behalf of the State.

that Mr. Madison's ear was slightly frost-bitten while speaking. Some traces of the injury always remained; and he would playfully point to them as the honorable scars he had borne from the battle-field. It is gratifying to know, that this brief political campaign was not attended with any interruption of the personal cordiality of the parties. In writing a few weeks afterwards to Mr. Jefferson, the common friend of both, Mr. Madison says, "It gives me great pleasure to inform you, that the friendship of Monroe and myself has not been affected, in any degree, by our late political opposition."

THE Appendices referred to in the course of this volume are here omitted, — the matter of almost all of them being embraced in a compilation of the writings of Mr. Madison, recently published by order of Congress.

END OF VOL. II.

LIBRARY OF CONGRESS
0 010 418 963 5